This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

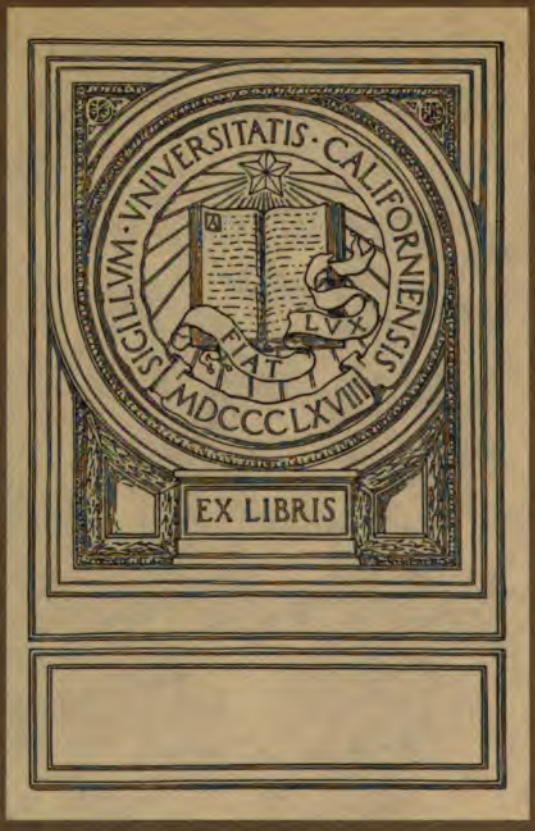
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

Digitized by Google



Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

CANADIAN CONSTITUTIONAL DEVELOPMENT

Digitized by Google

Digitized by Google

CANADIAN CONSTITUTIONAL DEVELOPMENT

SHOWN BY SELECTED SPEECHES AND DESPATCHES, WITH INTRODUCTIONS AND EXPLANATORY NOTES

BY H. E. EGERTON, M.A.
FELLOW OF ALL SOULS' COLLEGE; BEIT PROFESSOR OF COLONIAL HISTORY IN THE UNIVERSITY OF OXFORD

AND W. L. GRANT, M.A.
BEIT ASSISTANT LECTURER IN COLONIAL HISTORY IN THE UNIVERSITY OF OXFORD

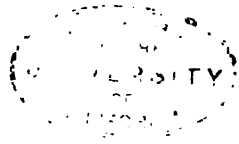
LONDON
JOHN MURRAY, ALBEMARLE STREET, W.
1907

Digitized by Google

JL11
.E3

GENERAL

Digitized by Google



PREFACE

In the following pages the attempt is made to trace, from the writings and speeches of those concerned in the work, the development of the Canadian Constitution. The chief Acts of Parliament and Treaties in which the stages of its progress are recorded have been collected in a very handy and useful volume, edited by Mr. William Houston of Toronto; but the dry bones of Acts of Parliament, if they are to be galvanized into life, require the flesh and blood which come from considering the motives and language of their authors. The present collection of speeches and dispatches needs, then, no apology. At a time when the future constitution of the British Empire is generally recognized as one of the most pressing questions awaiting solution, the constitutional evolution of the Dominion of Canada deserves and needs attentive study, while to the ordinary reader the material which should be consulted is by no means ready at hand. To mention three important authorities from which long extracts have been taken, the Report by Sir Henry Cavendish of the Debates in the House of Commons on the Quebec Act is a scarce book, difficult to find except in the British Museum or the library of the Royal Colonial Institute; the Letters and Speeches of the Nova Scotian orator, Joseph Howe, are out of print; and the volume of the Confederation Debates in 1865, in the Canadian legislature, is not easy of access to the English reader.

Apart, moreover, from these special cases, dispatches hidden in old Blue books, though in theory easy of refer-

181587

Digitized by Google

ence, are in fact often neglected ; and even letters, contained in general biographies written many years ago, gain an added interest when placed in a context which brings out their constitutional importance. For the first years of British rule, from 1760 to the passing of the Constitutional Act of 1791, the recently published volume of constitutional documents, edited by the Canadian Government archivist, Mr. A. G. Doughty, and Professor Shortt, of Queen's University, Kingston, are invaluable. But even though the following periods should be dealt with on the same exhaustive scale, the need of a single volume, to gather together the more important documents, extending over a hundred years, is none the less manifest.

It has not seemed necessary to reprint here the speeches of British statesmen in Parliament, because the volumes of Hansard are easy of reference, and it was inadvisable to overload the present book. It will be noted that no extracts are included from the most important of all public papers relating to Canadian history. The reason is obvious. Lord Durham's Report on British North America must be studied as a whole. It may not be an infallible statement of facts ; the author's personal knowledge of Upper Canada was very slight, and he may in some cases have been misled by his informants. The time-spirit has dealt very summarily with one of the main tenets of his political belief—the view that it was necessary to absorb the French national character in a dominant Anglo-Saxon type. But, though it may not be without mistakes, the Report is none the less a work of genius, not a line or word of which should be neglected or ignored by the student of the Canadian Constitution. Unless a statesman of Lord Durham's position and calibre had taken up the cry for responsible government, it is probable that all the arguments and eloquence of a Joseph Howe might for years have remained unheeded and ignored by British Ministers, with results to the Empire which one shudders to contemplate ; and if the final form

Digitized by Google

of the Dominion has been other than the one roughly sketched by Lord Durham, the idea which it embodies is none the less the idea which inspired him, when it seemed as though in imperial matters the Urim and Thummim of the first Empire-builders were no longer in the land.

It would be difficult to find a hundred years richer in constitutional experience than is the period dealt with in the present volume. It is true that Canadian history presents no situation so striking or dramatic as that under which the general of the forces of a hostile Dutch republic has become within the space of some five years the Prime Minister of a British Colony endowed with full responsible government. But if, compared to such lightning turns, the development of Canada has been slow, compared to other historical precedents it has been rapid enough. We start with a conquered country, a *tabula rasa* upon which Great Britain may write as seems good to her. During a brief period of military rule British officers endeavour, upon the whole with success, to mitigate in practice the harshness of the position. The proclamation of 1763, which appeared to sweep away the whole fabric of French law, added to the confusion, as it was never given full effect, and neither the natural ability nor the legal attainments of the British rulers sufficed to evolve a new system ; while the appointment of Murray to the civil government was so far a failure in that it gave no solution to the difficult problems connected with the laws and the Church. In the years which preceded the Quebec Act we find in the records the frequent and anxious endeavours which were made to solve the question, and we recognize that that Act, so far from being the bolt from the blue directed against the fabric of American liberties it has been sometimes represented, was the outcome of painful efforts to deal with the particular difficulties of Canadian circumstances. It has been criticized and condemned by very able writers, in that it stereotyped

Digitized by Google

and made permanent a condition of things which it was the interest of Great Britain to supersede. But a different policy might have had results still more disastrous. Certain it is that, when we consider what a bulwark to British connexion has been the fact that the Roman Catholic Church has recognized Great Britain to be its friend and the United States to be its danger, we may continue to hold that the wisdom of the Quebec Act has been justified by its results.

Hardly had the policy of recognizing a French colony in the British Empire been formally adopted when a new scene opened, leading to new political developments. The successful revolt of the American colonies entailed the voluntary banishment of those who were British subjects first, and citizens of this or that colony or State only in a secondary degree. In the death-throes of the first British empire in America was born the offspring which in time was to make up for the loss of those first possessions. Henceforth Lower and Upper Canada advance side by side, the one growing more aggressively French as the common people awoke from the political apathy which was the heritage of French absolutism, under the influence of political leaders or demagogues, who were peculiarly their own kith and kin; the other in its origin and in its character no less aggressively Anglo-Saxon; so that the chances of a United Canada seemed small, if not hopeless. Such points of sympathy as existed were found in common opposition to the impossible system of government, under which a suffrage much more democratic than that of Great Britain, and a legislature really representative of the people, stood confronted with an executive wholly irresponsible to colonial public opinion. The Quebec Act, plausibly and reasonably at the time, had merely introduced a Nominated Council, and no attempt was made to take advantage of the breathing space to set up a system of local self-government or of popular education; so that when, under the

Digitized by Google

Constitutional Act, it was thought necessary to deal with the two provinces on the same lines, and to give to the French Canadians the representative institutions which could not be denied to those who in the American colonies had always enjoyed them, the measure, so far as Lower Canada was concerned, was a leap in the dark. Something will be shown in the following pages of the miserable *impasse* to which matters came; but it is worth noting that Lower Canada could approach no nearer to the continental demagogue than the bourgeois Papineau; while the nearest approach to a tyrant, in the heated imaginations of political partisans, was the well-meaning, if blundering, Craig.

The period of the two Canadas was closed by the Act of Union, while the grant of responsible government ended the political controversy between the colonies and Great Britain; but the gulf between the two portions of the country was too deep to be bridged by an Act, which itself, by giving equality of representation to the two sections, recognized the permanence of racial divisions. In these circumstances, the nominal union of those whom associations of race and of religion kept apart, proved a failure, and events seemed hastening to a deadlock as serious as, though different from, the one which had followed the working of the Constitutional Act. Most fortunately a federal constitution proved the *Deus ex machina* which, while securing to local prejudices the preservation of local rights, was able to start the Dominion, as a whole, upon the road of nationhood. These phases, then, of Canadian constitutional life—the working of military rule, the preparations for the Quebec Act, the Government of the country under that Act, the new situation created by the coming of the loyalists, the Constitution conferred on the two provinces by the Constitutional Act, the failures of that system in its working, the demand for responsible government, the recognition of that system under the Union, the difficulties attending the existence of conflict-

Digitized by Google

ing nationalities, and the discussions which led to federation—all these will be found illustrated in the following pages. Incidentally will be noted the political ground-swell which followed the high-tide of Free Trade, and the full triumph of the principle which claimed complete independence for the colonial legislature in all matters of local concern. The history of British North America has been too exclusively approached from the point of view of Canadian experience ; but the writings here given are enough to show how great a part the Maritime Provinces played in the building up of the future Constitution ; indeed, the letters of Joseph Howe to Lord John Russell, here published in full, can hardly be surpassed in political literature for clearness and power of argument.

In taking stock of the material here collected, the dominant feeling of the modern observer may well be one of admiration for the good intentions and good sense of those who, in their different ways, laboured at the work of Canadian constitutional development. The little quoted from Carleton is sufficient to bring out the sterling merits of that great Governor, and if the elder Pitt is not very happy in invoking the spectre of the Inquisition before the humdrum details of the Quebec Act, British statesmen, for the most part, show their best face in the attempt to do substantial justice. A hereditary aristocracy on American soil may have proved a vain dream, but none the less was the idea of finding a makeweight to a pure democracy altogether reasonable and well-justified, from the point of view of the time. It is true that a book of this kind does not bring out the fatal defects of British government. It was procrastination and the tendency to shirk difficult questions, rather than wilful misdoing, which was the besetting sin of the colonial policy of the time. Still, making allowance for all this, there is much in the dispatches here given which cannot but command respect and admiration. To those whose chief knowledge of Lord Grey's administration of colonial affairs is derived

Digitized by Google

from the fierce controversy to which it gave birth over the subject of transportation, it will be welcome to find him giving cordial and complete recognition to the principle of responsible government in the Maritime Provinces. Even the much-abused Tory "family compact" of Upper Canada are able to show how much gold was mingled with their alloy, by the reprint of the very able report which was their reply to the criticisms of Lord Durham. What could be more characteristic of the different needs of different periods, and the manner in which they were successively met, than the letters of Lord Sydenham and of Lord Elgin, if put side by side? The *l'état c'est moi* of Sydenham is admirably adapted to a period of transition from chaos to order, wherein men have to be driven to their right position; while, after the uneasy interval of the political struggles of Metcalfe's Government (the complicated character of which it has been impossible to bring out without giving to the episode disproportional space), the serene temper of Elgin ushers in and justifies the new modes of political influence, open to the Governor-General, under the system of responsible government.

And if British statesmen emerge with credit from the ordeal of being their own spokesmen, the same thing may assuredly be said of their Canadian confrères. Mention has already been made of Joseph Howe; but the brief references to Robert Baldwin in the following pages will be enough to bring out something of the part he played along with La Fontaine in the first years of complete self-government. The "much-contriving" John A. Macdonald and the fervent George Brown alike only gain in reputation from their spoken judgments; and throughout the debates on federation, in the language of the opponents no less than in that of the advocates of the measure there is a note of integrity and of high-minded patriotism which shows that in that portion of America, at least, politics have still the power of attracting the better men.

The primary object of this volume is to furnish a text-

Digitized by Google

book for those who are taking up the special subject of the evolution of Canadian self-government in the modern history school at the University of Oxford; but it is hoped that both in Great Britain and in Canada it may be of service to a wider circle of readers who are interested in the Imperial problems of the present and the future, and recognize that only when hewn from the quarries of past history and experience can the foundation-stones of the future be laid firm and secure. The notes have been confined to as small a space as possible, especially with respect to biographical details, for which the reader should consult the *Dictionary of National Biography*.

The main work of passing through the press and annotating the present collection of documents has been taken by my colleague, Mr. W. L. Grant, though the form of the book and the choice of material are largely my own. We have to express our gratitude to the Royal Colonial Institute for the loan of books, and to the Librarian of Bodley's Library for permission to make photographic copies of documents.

HUGH E. EGERTON.

September, 1907.

Digitized by Google

CONTENTS

INSTRUCTIONS TO GOVERNOR JAMES MURRAY

	PAGES
Appointment of a Council	3
A General Assembly	5
Duties as to Legislation	7
Administration of Justice	9
Toleration for Catholics	11
Establishment of the Church of England	13
Land Surveys	15
Indians	17
Conduct in Time of War	19
Periodic Reports	21

THE QUEBEC ACT

Speech of Lord North	23–27
Increase of Territory	23
Civil Law	25
Speech of Dunning	27–33
Promises of 1763 broken	27
Extension inadvisable	29
The Real Origin of the Bill	31
Speech of Thurlow	33–41
The Boundary Question	33
Law as to Conquered Countries	35
French Civil Law	37, 57
The Governor and Council	39
Legal Systems	41
Speech of Barré	41–44
Evil of perpetuating French Law	43
Speech of Fox	44–45
An Asylum for Roman Catholics	45
Passage of Second Reading	45
Opposition Motion for Information	45, 46

Digitized by Google

PAGES

Speech of Burke - - - - - - - 46
Burke asks for Information - - - - - 47
Burke pleads for Delay - - - - - - 49
Evidence of Carleton - - - - - 50–65
Increase of Trade - - - - - - - 53
Wishes of the French-Canadians - - - - - 55
French-Canadian Law - - - - - 59, 83
Desire for Ancient Usages - - - - - 61
Complaints as to English Law - - - - - 63
Evidence of Masères - - - - - 65–74
Trial by Jury - - - - - - 67, 75
Murray's Administration - - - - - 69
An Anglo-French Legal System - - - - - 71
Religion in the Province - - - - - 73
Evidence of Chief Justice Hey - - - - 74–85
Habeas Corpus - - - - - - - 77
Canadian Civil Law - - - - - - 79
Wishes of the French-Canadians - - - - - 81
Burke on Toleration - - - - - 85–87
Barré on Popery - - - - - - 87, 88
Fox urges an Assembly - - - - - 88, 89
Speech of Lord North - - - - - 89, 90
Speech of Burke - - - - - - 91–95
Trial by Jury - - - - - - - 91
Juries need not be Unanimous - - - - - 93
Vote in House of Lords - - - - - - 95
Opposition of Chatham - - - - - - 95
His Denunciation of Popery - - - - 96, 97

THE CONSTITUTIONAL ACT OF 1791

Despatch of Lord Dorchester - - - - 99–103
Representative Government - - - - - 99
The Council and Assembly - - - - - 101
General Government Proposed - - - - - 103
Letters of Chief Justice Smith - - - - 104–110
Growth of Colonial Democracy - - - - - 105
A General Legislature - - - - - - 107
Rights of the Crown - - - - - - 109
Despatch of Lieutenant-Governor Milnes - - - 110–121
Weakness of Executive - - - - - 111–113
Increase of Crown Influence desirable - - - - 115
The Militia - - - - - - - - 117
Defects of the Assembly - - - - - - 119
Education and Religion - - - - - - 121

Digitized by Google

PROPOSALS FOR UNION

	PAGES
Letter of Sir John Sherbrooke	123–125
Proposed General Union	123
Arguments against Union	125
Petition from Quebec	125–129
Evils of Disunion	127
Petition from Wentworth	129–133
Opposition in Upper Canada	129
Objections to Union	131
Petition from Lower Canada	133–137
Objections to Union	134–136
Petition from Montreal	137–146
Former Mistakes	137
Impolicy of Constitutional Act	139
"La Nation Canadienne"	141
Trade Disputes	143
Trade with France	145
Letter from John Beverley Robinson	146–148
Pan-Britannic Union	147

LORD DURHAM'S REPORT

Letters to Lord Glenelg	149–173
Race Feeling in Lower Canada	151
Race Question	153
Attitude of United States	155
American Sympathies	157, 159
Feeling of British Party	161
Durham's Resignation	163
Effects of Resignation	165
Anger at British Vacillation	167
Views of Sir John Colborne	168, 169
Danger of Separation	169
Chances of Insurrection	171
Feeling in Upper and Lower Canada	172, 173
Protest of the "Family Compact"	173–188
Errors of Durham	175
Two Kinds of Responsibility	177
Position of Governor	179
Colonial Opinion Unstable	181
Evils of Popular Government	183
Need of Imperial Control	185
Inaccuracies of Durham	187

Digitized by Google

RESPONSIBLE GOVERNMENT IN THE MARITIME PROVINCES

	PAGES
Letters of Joseph Howe to Lord John Russell	191–252
Colonial Loyalty	193
The British Constitution	195
Colonial Executive immovable	197
Constitution of Executive	199
The Evil and the Remedy	200
Demand for British Privileges	203
Objections of Lord John Russell	205
Conflict as to Responsibility	207
Irresponsibility of Governor	209
Municipal Analogy	201, 211–213
Situation in Upper Canada	215
Power of Colonial Office	217
Government from a Distance	219
Imperial Interests not Involved	221
Situation in New Brunswick	223
The Military Question	225
The Two Systems contrasted	227
Trade and Commerce	229
Need of Protest	231
Proposed New System	233
Council under Old System	235
Oligarchical Character of Council	236
Council under the Two Systems	237
Improved Legislature	239
Evils of Old System	241
Distribution of Patronage	243
Papineau and Mackenzie	245
The Example of Ireland	247
Colonial Liberties	249
Colonial Disabilities	251

RESPONSIBLE GOVERNMENT—I.

Sydenham's Instructions	255–266
Proposed Union	257
Emigration and the Land Question	259
Finances of Upper Canada	261
Bills rejected by the Crown	263
Clergy Reserves	265
Lord J. Russell on Responsible Government	266–272
Consequences of the Theory	267

Digitized by Google

PAGES

English Constitutional Practice - - - - - 269
Tenure of Public Offices - - - - - - 271
Reply of Sydenham - - - - - - 272–274
Opinion in Lower Canada - - - - - 273, 277
Resolution of Sydenham's Council - - - - 274–277
Proposed Terms of Union - - - - - - 275
Letters of Sydenham - - - - - 277–289
Necessity of Union - - - - - - 279
Municipal Institutions - - - - 281, 283, 285
Plans of Sydenham - - - - - - 277
First United Parliament - - - - - - 289
Speech of Sydenham - - - - - 289–294
Public Works and Emigration - - - - - 291
Promise of Imperial Aid - - - - - - 293

RESPONSIBLE GOVERNMENT—II.

Views of Lord Metcalfe - - - - - 295–296
Earl Grey's New Policy - - - - - - 297
His Letters to Sir John Harvey - - - - 297–313
Legislative and Executive Councils - - - - 299
Governor and Executive - - - - - - 301
Status of Officials - - - - - - - 303
Necessary Changes - - - - - 305, 307
Proposed Changes - - - - - - 309
Letters of Lord Elgin - - - - - 310–334
Governor under New System - - - - - 311
Rebellion Losses Bill - - - - - - 313
Feeling of British Minority - - - - - 315
Riots at Montreal - - - - - - 317
Opinion of Assembly - - - - - - 319
Elgin's Criticisms of Lord J. Russell - - - 321–326
The Future of the Empire - - - - - 321
Baldwin on Dismemberment - - - - - 323
Colonial Independence - - - - - - 325
Rival Systems of Government - - - - 327–331
Rôle of Governor - - - - - - - 333

THE ANNEXATION MOVEMENT

Manifesto from Montreal - - - - - 335–343
Repeal of Navigation Acts - - - - - 335
Reciprocity Treaty with United States - - - - 335
Gloomy Situation - - - - - - - 337
Proposed Remedies - - - - - - 339

Digitized by Google

PAGES

Union with United States - - - - - - 341
Letters of Lord Elgin - - - - - 343–347
Need of Reciprocity - - - - - - 343
Cost of British Connexion - - - - - - 345
Imperial Ideals - - - - - - - 347

THE TARIFF CONTROVERSY

Letter of the Duke of Newcastle - - - - 348
Reply of Galt - - - - - - 349–351

FEDERATION

Coalition - - - - - - - - 352
Quebec Conference - - - - - - 353
Speech of J. A. Macdonald - - - - 355–396
Steps towards Federation - - - - 355, 357
Conference at Charlottetown - - - - 359
Alternative Solutions - - - - - - 361
Federation or Union - - - - - - 363
Financial Economies - - - - - - 365
Need of Compromise - - - - - - 367
Danger from United States - - - - - 369
British and American Systems - - - - - 371
British Connexion preserved - - - 373, 393, 395
Constitution of Lower House - - - - - 375
Constitution of Upper House - - - - 377–381
Representation by Population - - - - 383
Constitution of Legislatures - - - - - 385
Federal and Provincial Powers - - - - 387–391
Speech of Cartier - - - - - - 396–409
Necessity of Federation - - - - - 397
Fear of American Annexation - - - - 399
Loyalty of French - - - - - - 401–403
Strength from Diversity of Race - - - - 405
Heterogeneity of Opposition - - - - 407
Speech of Galt - - - - - - 409–411
Increase of Trade - - - - - - 409
Speech of George Brown - - - - - 411–425
History of Movement - - - - - 411
Difficulties of Solution - - - - - 413
Vast Resources of Canada - - - - - 415
Nomination *v.* Election - - - - - 417
Local Government and Taxation - - - - 419
Local Matters and Education - - - - 421
The Maritime Provinces - - - - - 423

Digitized by Google

PAGES

The North-West - - - - - - - 425
Speech of D'Arcy McGee - - - - - 425–428
Greatness of the Subject - - - - - - 426
Change in British Policy - - - - - - 427
Speech of Dorion - - - - - - 428–455
Same Scheme already rejected - - - - - 429
Dorion's past Attitude - - - - - - 431
Liberal Policy in 1859 - - - - - - 433
Liberal Policy in 1862 - - - - - - 435
Rights of Minorities - - - - - 437, 455
Grand Trunk Railway - - - - - - 439
Inconsistency of Ministers - - - - - 441
Alterations in Scheme - - - - - - 443
Legislative Council - - - - - - 445
Undue Influence of Crown - - - - - 447
Intercolonial Railway - - - - - - 449
Undue Centralization - - - - - - 451
Legislative Union foreshadowed - - - - - 453
Speech of Langevin - - - - - 456, 457
The American Danger - - - - - - 456
Speech of Dunkin - - - - - - 457–470
Importance of Details - - - - - - 457
Shifting Constituencies - - - - - - 459
Unwieldiness of proposed Cabinet - - - - 461
Provincial Constitutions - - - - - - 463
Division of Powers - - - - - - 465
Extravagance encouraged - - - - - 467
Risk of Separation from Britain - - - - - 469

CONCLUSION - - - - - - - 471

Digitized by Google

Digitized by Google

GOVERNORS AND ADMINISTRATORS OF CANADA

AMHERST,[1] General Jeffrey	Sep.	8, 1760,	to .....
MURRAY, General James	Aug.	10, 1764,	to June 28, 1766
Irving,[2] Paulus Æmilius	June	30, 1766,	to Sep. 23, 1766
Carleton, Lt.-Gov. Guy	Sep.	24, 1766,	to Oct. 25, 1768
CARLETON, Guy	Oct.	26, 1768,	to June 26, 1778
Cramahé, Hector Theophilus	Aug.	9, 1770,	to Oct. 10, 1774
HALDIMAND, Frederick	June	27, 1778,	to Nov. 15, 1784
Hamilton, Lt.-Gov. Henry	Nov.	16, 1784,	to Nov. 1, 1785
Hope, Lt.-Gov. Henry	Nov.	2, 1785,	to Oct. 22, 1768
DORCHESTER, Baron	Oct.	23, 1786,	to July 11, 1796
Clarke, Lt.-Gov. Alured	Aug.	17, 1791,	to Sep. 24, 1793
Prescott, Lt.-Gov. Robert	July	12, 1797,	to Apr. 26, 1797
PRESCOTT, Robert	Apr.	27, 1797,	to Aug. 28, 1807
Milnes, Lt.-Gov. Robert Shore	July	26, 1799,	to Aug. 3, 1805
Dunn, Thomas	Aug.	4, 1805,	to Oct. 23, 1807
CRAIG, Sir James Henry	Oct.	24, 1807,	to June 19, 1811
Dunn, Thomas	June	20, 1811,	to Sep. 13, 1811
PREVOST, Sir George	Sep.	14, 1811,	to April 4, 1815
Rottenburg, Major-Gen. Francis de	May	12, 1813,	to June 13, 1813
Glasgow, Major-Gen. George	June	14, 1813,	to Sep. 25, 1813
Drummond, Sir Gordon	April	5, 1815,	to May 21, 1816
Wilson, Major-Gen. John	May	22, 1816,	to July 11, 1816
SHERBROOKE, Sir John Coape	July	12, 1816,	to July 29, 1818
RICHMOND, Charles, Duke of	July	30, 1818,	to Aug. 28, 1819
Monk, James	Sep.	20, 1819,	to Feb. 7, 1820
Maitland, Sir Peregrine	Feb.	8, 1820,	to Feb. 8, 1820
Monk, James	Feb.	9, 1820,	to Mar. 16, 1820
Maitland, Sir Peregrine	Mar.	17, 1820,	to June 18, 1820

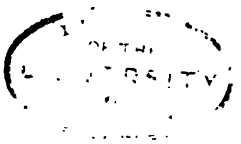
[1] Amherst resigned his position as Commander-in-Chief of the Forces in North America in 1763. He had left Canada in the autumn of 1760 (see p. 1).

[2] The names in smaller type are those of the Administrators who carried on the government in the absence of the Governor.

Digitized by Google

DALHOUSIE, George, Earl of	June 19, 1820, to Sep.	7, 1828
Burton, Lt.-Gov. Sir Francis Nathaniel	June 7, 1824, to Sep.	16, 1825
Kempt, Sir James	Sep. 8, 1828, to Oct.	19, 1830
Aylmer, Matthew Whitworth Aylmer, Baron	Oct. 20, 1830, to Feb.	3, 1831
AYLMER, Matthew Whitworth Aylmer, Baron	Feb. 4, 1831, to Aug.	23, 1835
GOSFORD, Archibald Acheson, Earl of	Aug. 24, 1835, to Feb.	26, 1838
Colborne, Sir John	Feb. 27, 1838, to May	28, 1838
DURHAM, John Geo. Lambton, Earl of	May 29, 1838, to Oct.	31, 1838
Colborne, Sir John	Nov. 1, 1838, to Jan.	16, 1839
COLBORNE, Sir John	Jan. 17, 1839, to Oct.	18, 1839
THOMSON, Chas. Edward Poulett	Oct. 18, 1839, to Sep.	19, 1841
Jackson, Sir Richard Downes	Sep. 24, 1841, to Jan.	11, 1842
BAGOT, Sir Charles	Jan. 12, 1842, to Mar.	29, 1843
METCALFE, Sir Charles Theophilus	Mar. 30, 1843, to Nov.	25, 1845
Cathcart, Charles Murray, Earl of	Nov. 26, 1845, to Apr.	23, 1846
CATHCART, Charles Murray, Earl of	Apr. 24, 1846, to Jan.	29, 1847
ELGIN, James Bruce, Earl of	Jan. 30, 1847, to Dec.	18, 1854
Rowan, Lieut.-Gen. William	Aug. 23, 1853, to June	10, 1854
HEAD, Sir Edmund Walker	Dec. 19, 1854, to Oct.	24, 1861
Eyre, Sir William	June 20, 1857, to Nov.	2, 1857
Williams, Sir William Fenwick	Oct. 12, 1860, to Feb.	22, 1861
MONCK, Charles Stanley, Viscount	Oct. 25, 1861, to June	30, 1867
Michel, Sir John	Sep. 30, 1865, to Feb.	12, 1866

Digitized by Google



CANADIAN CONSTITUTIONAL DEVELOPMENT

INSTRUCTIONS TO GOVERNOR JAMES MURRAY

By the surrender at Montreal, on September 8, 1760, of De Vaudreuil and De Lévis, the French Governor and Commander-in-Chief, Canada passed into the hands of Britain. The surrender was confirmed by the Treaty of Paris, signed at Paris on February 10, 1763. During the interval, and for some months after, Canada remained under military rule. The nominal head was the Commander-in-Chief, General Amherst, who had his headquarters at New York, but the administration was really in the hands of the Lieutenant-Governors at Quebec, Montreal, and Three Rivers. On the conclusion of peace it became necessary to establish civil government, and on December 7, 1763, a commission was issued to General James Murray, who had been in command at Quebec since the autumn of 1759, appointing him "Captain-General and Governor-in-Chief in and over Our Province of Quebec in America."[1] On the same day were issued his instructions, which are here given,

[1] Murray remained in Canada till June, 1766, when he sailed for England. He retained office till April, 1768, when he was succeeded by Sir Guy Carleton. For a complete list of Governors from 1763 to 1867, see Appendix I.

Digitized by Google

and which had evidently been drawn up with great care. While many of the eighty-two sections are copied from the ordinary instructions given at the time to colonial Governors, some even of these contain significant changes, and others are obviously drawn up with special regard to the circumstances of the new province.[1]

The original instructions are in the Public Record Office in London. The copy here given is taken from that in the Report of the Canadian Archivist for 1904, which has been carefully collated with the original.[2]

1. With these Our Instructions You will receive Our Commission under Our Great Seal of Great Britain, constituting You Our Captain General and Governor in Chief in and over Our Province of Quebec in America, bounded on the Labrador Coast by the River St. John, and from thence by a Line drawn from the Head of that River through the Lake St. John to the South End of the Lake Nipissin; from whence the said Line crossing the River St. Lawrence and the Lake Champlain in forty-five Degrees of North Latitude, passes along the High Lands, which divide the Rivers that empty themselves into the said River St. Lawrence, from those which fall into the Sea; and also along the North Coast of the Baye des Chaleurs and the Coast of the Gulph of St. Lawrence to Cape Rosieres, and from thence crossing the mouth of the River St. Lawrence by the West End of the Island of Anticosti, terminates at the aforesaid River of St. John: You are therefore to take upon You the Execution of the Office and Trust We have reposed in You, and the Administration of Government, and to do and execute all things in due manner that shall belong

[1] The instructions to Murray may be compared with those issued in 1758 to Governor Bernard, of New Jersey, which are printed in *New Jersey Documents*, vol. ix., p. 40, and in the appendix to E. B. Greene's *The Provincial Governor in North America* (London and New York, 1898). Sections 1–4, 7, 8, 12–14, 22, 24–27, 34–40, 63, 66–71, 74, 76, 81, 82 of Murray's instructions are evidently based on the same archetype as Bernard's.

[2] All the instructions issued to Governors from 1763 to 1867, and those issued to the Lieutenant-Governors of Upper Canada from 1791 to 1839, are included in the Reports of the Canadian Archivist for 1904 and 1905 (vol. i.).

Digitized by Google

to your Command, according to the several Powers and Authorities of Our said Commission under Our Great Seal of Great Britain, and these Our Instructions to You, or according to such further Powers and Instructions as shall at any Time hereafter be granted or appointed You under Our Signet and Sign Manual, or by Our Order in Our Privy Council.

2. And You are, with all due Solemnity, to cause Our said Commission to be published at Quebec, which We do appoint to be the Place of your Residence and the principal Seat of Government, in the Districts of Montreal and Trois Rivieres, and in such other parts of your Government as You shall think necessary and expedient, as soon as possible; which being done, You are in the next place to nominate and establish a Council for Our said Province, to assist You in the Administration of Government, which Council is, for the present, to be composed of the Persons, whom We have appointed to be Our Lieutenant Governors of Montreal and Trois Rivieres, Our Chief Justice of Our said Province, and the Surveyor General of Our Customs in America for the Northern District, and Eight other Persons to be chosen by You from amongst the most considerable of the Inhabitants of, or Persons of Property in Our said Province; which Persons so nominated and appointed by You as aforesaid, (Five of which We do hereby appoint to be a Quorum,) are to be Our Council for Our said Province, and to have and enjoy all the Powers, Privilege and Authority usually exercised and enjoyed by the Members of Our Councils in Our other Plantations, and also such others as are contained in Our said Commission under Our Great Seal of Great Britain, and in these Our Instructions to You; and they shall meet together at such Time or Times, Place or Places, as You, in your Discretion, shall think necessary and expedient: It is nevertheless Our Will and Pleasure, that the said Chief Justice, or Surveyor General of Our Customs, shall not be capable of taking the Administration of the Government upon the Death or Absence of You Our Governor, or the Commander in Chief for the Time being.

3. And You are forthwith to call Our said Council together, or such of them as can be conveniently assembled, and to cause Our said Commission to You to be read at such Meeting; which being done, You shall then

Digitized by Google

take yourself, and also administer to Our Lieutenant Governors respectively, and to the Members of Our said Council, the Oaths mentioned in an Act, passed in the first Year of the Reign of His Majesty King George the First, intituled, "An Act for the further Security of His Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants, and for extinguishing the Hopes of the pretended Prince of Wales, and his open and secret Abettors;"—as also to make and subscribe, and cause them to make and subscribe the Declaration mentioned in an Act of Parliament made in the Twenty-fifth Year of the Reign of King Charles the Second, intituled, "An Act for preventing Dangers which may happen from Popish Recusants." And You and every one of Them are likewise to take an Oath for the due Execution of your and their Places and Trusts, with regard to your and their equal and impartial Administration of Justice;—and You are also to take the Oath required by an Act passed in the seventh and eighth Years of the Reign of King William the Third to be taken by Governors of Plantations, to do their utmost that the Laws relating to the Plantations be observed.

4. And You are forthwith to transmit unto Our Commissioners for Trade and Plantations, in order to be laid before Us for Our Approbation or Disallowance, the Names of the Members of the Council, so to be appointed by You, as aforesaid; as also a List of the Names and Characters of Eight other Persons in Our said Province, whom You judge properly qualified to serve in that Station; to the End that, if any of the Persons appointed by You, as aforesaid, shall not be approved and confirmed by Us, under Our Signet and Sign Manual, the Place or Places of such Persons so disapproved may be forthwith supplied from the said List, or otherwise, as We shall think fit.

Sections 5-8 deal with the manner in which vacancies are to be filled, and the circumstances under which seats in the Council may be declared void.

9. You are forthwith to communicate such and so many of these Our Instructions to Our said Council,

Digitized by Google

wherein their Advice and Consent are mentioned to be requisite ; as likewise all such others, from time to time, as You shall find convenient for Our Service to be imparted to them.

10. You are to permit the Members of Our said Council to have and enjoy Freedom of Debate and Vote, in all affairs of public Concern that may be debated in Council.

11. And whereas it is directed, by Our Commission to You under Our Great Seal, that so soon as the Situation and Circumstances of Our said Province will admit thereof, You shall, with the Advice of Our Council, summon and call a General Assembly of the Freeholders in Our said Province ; You are therefore, as soon as the Rules and Regulations, by the Advice of Our said Council, as shall appear to be carrying this important Object into Execution : But, as it may be impracticable for the present to form such an Establishment, You are in the mean time to make such Rules and Regulations, by the Advice of Our said Council, as shall appear to be necessary for the Peace, Order and good Government of our said Province, taking Care that nothing be passed or done, that shall any ways tend to affect the Life, Limb or Liberty of the Subject, or to the imposing any Duties or Taxes ; and that all such Rules and Regulations be transmitted to Us, by the first Opportunity after they are passed and made, for Our Approbation or Disallowance. And it is Our Will and Pleasure, that when an Assembly shall have been summoned and met, in such manner as You, in your Discretion, shall think most proper, or as shall be hereafter directed and appointed, the following Regulations be carefully observed in the framing and passing all such Laws, Statutes and Ordinances, as are to be passed by You, with the Advice and Consent of Our said Council and Assembly ; viz. :

That the Style of Enacting the said Laws, Statutes and Ordinances be by the Governor, Council, and Assembly, and no other ;—

That each different Matter be provided for by a different Law, without including in one and the same Act such Things as have no proper Relation to each other ;—

That no Clause be inserted in any Act or Ordinance, which shall be foreign to what the Title of it imports ; and that no perpetual Clause be part of any temporary Law ;—

Digitized by Google

That no Law or Ordinance whatever be suspended, altered, continued, revived, or repealed by general Words; but that the Title and Date of such Law or Ordinance be particularly mentioned in the enacting part;—

That no Law or Ordinance, respecting private Property, be passed without a Clause suspending its Execution, until Our Royal Will and Pleasure is known; nor without a Saving of the Right of Us, Our Heirs and Successors, and of all Bodies politic and corporate, and of all other Persons, except such as are mentioned in the said Law or Ordinance, and those claiming by, from and under them; and before such Law or Ordinance is passed, Proof must be made before You, in Council, and entered in the Council Books, that public Notification was made of the Party's Intention to apply for such Act in the several Parish Churches, where the Lands in Question lie, for three Sundays at least successively before any such Law or Ordinance shall be proposed; and You are to transmit, and annex to the said Law, or Ordinance, a Certificate under your hand, that the same passed through all the Forms above-mentioned;—

That in all Laws or Ordinances for levying Money, or imposing Fines, Forfeitures or Penalties, express mention be made, that the same is granted or reserved to Us, Our Heirs and Successors, for the public Uses of the said Province, and the support of the Government thereof, as by the said Law or Ordinance shall be directed; and that a Clause be inserted, declaring that the money arising by the Operation of the said Fines, Forfeitures, or Penalties, express mention be made, that the same is granted or reserved to Us, Our missioners of Our Treasury, or Our High Treasurer for the time being, and audited by Our Auditor General of Our Plantations, or his Deputy;—

That all such Laws, Statutes and Ordinances be transmitted by You within three months after their passing, or sooner, if Opportunity offers, to Our Commissioners for Trade and Plantations; that they be fairly abstracted in the Margents, and accompanied with very full and particular Observations upon each of them, that is to say, whether the same is introductive of a new Law, declaratory of a former Law, or does repeal a Law then before in being; and You are also to transmit, in the fullest

Digitized by Google

manner, the Reasons and Occasion for enacting such Laws, or Ordinances, together with fair copies of the Journals of the Proceedings of the Council and Assembly, which You are to require from the Clerks of the said Council and Assembly.

12. And to the end that nothing may be passed or done to the Prejudice of the true Interests of this Our Kingdom, the just Rights of Us, Our Heirs and Successors, or the Property of Our Subjects; it is Our express Will and Pleasure, that no Law whatever, which shall in any wise tend to affect the Commerce or Shipping of this Kingdom, or which shall any ways relate to the Rights and Prerogative of Our Crown, or the Property of Our Subjects, or which shall be of an unusual or extraordinary Nature, be finally ratified and assented to by You, until You shall have first transmitted a Draught of such Law, and shall have received Our Directions thereupon, unless You take care, that a Clause be inserted, suspending and deferring the Execution thereof, until Our Pleasure is known concerning the same.

13. And whereas Laws have formerly been enacted in several of Our Plantations in America for so short a time, that Our Royal Assent or Refusal thereof could not be had before the Time, for which such Laws were enacted, did expire; You shall not give your Assent to any Law, that shall be enacted for a less Time than two Years, except in Cases of imminent Necessity, or immediate temporary Expediency; and You shall not re-enact any Law, to which Our Assent shall have been once refused, without express Leave for that purpose first obtained from Us, upon a full Representation by You to be made to Our Commissioners for Trade and Plantations, in order to be laid before Us, of the Reasons and Necessity for passing such Law; nor give your Assent to any Law for repealing any other Law, which shall have passed in your Government, and shall have received Our Royal Approbation, unless You take Care that there be a Clause inserted therein, suspending and deferring the Execution thereof, until Our Pleasure shall be known concerning the same.

14. And We do particularly require You to take Care, that fair Books of Accounts of all Receipts and Payments of all Publick Money be duly kept, and the Truth thereof attested upon Oath; and that all such Accounts be audited, and attested by Our Auditor General of Our

Digitized by Google

Plantations, or his Deputy, who is to transmit Copies thereof to Our Commissioners of Our Treasury, or to Our High Treasurer, for the time being; and that You do, every half Year or oftener, send another Copy thereof, attested by yourself, to Our Commissioners for Trade and Plantations, and Duplicates thereof by the next Conveyance; in which Books shall be specified every particular Sum raised or disposed of, together with the Names of the Persons to whom any Payment shall be made; to the end We may be satisfied of the right and due Application of the Revenue of Our said Province, with the Probability of the Increase or Diminution of it under every Head and Article thereof.

15. And whereas the Members of several Assemblies in the Plantations have frequently assumed to themselves Privileges no ways belonging to them, especially of being protected from Suits at Law during the Term they remain of the Assembly, to the great Prejudice of their Creditors and the Obstruction of Justice; and some Assemblies have presumed to adjourn themselves at Pleasure, without Leave from Our Governor first obtained;[1] and others have taken upon them the sole framing of Money Bills, refusing to let the Council alter or amend the same;[2] all which Practices are very detrimental to Our Prerogative; If therefore You find, that the Members of the Assembly of Our Province of Quebec insist upon any of the said Privileges, You are to signify to them that it is Our express Will and Pleasure, that You do not allow any Protection to any Member of the Council or Assembly, further than in their Persons, and that only during the Sitting of the Assembly; and that You do not allow them to adjourn themselves otherwise than de die in diem, except Sundays and Holy-days, without Leave from You, or the Commander in Chief for the time being, first obtained; It is also Our further Pleasure, that the Council have the like Power of framing Money Bills as the Assembly.

16. And whereas by Our aforesaid Commission under Our Great Seal of Great Britain, You are authorized and impowered, with the Advice and Consent of Our Council,

[1] "We sit upon our own adjournments when we please and as long as we think necessary." (Speech of Andrew Hamilton, in Proud, *History of Pennsylvania*, ii. 217; cited by Greene, *The Provincial Governor*, p. 153.)

[2] Greene (*op. cit.*, pp. 122, 123) cites the case of New York.

Digitized by Google

to constitute and appoint Courts of Judicature and Justice; it is therefore Our Will and Pleasure, that You do, as soon as possible, apply your Attention to these great and important Objects; and that, in forming the necessary Establishments for this purpose, You do consider what has taken place in this respect in Our other Colonies in America, more particularly in Our Colony of Nova Scotia.[1]

17. And whereas it is for the Ease, Satisfaction and Benefit of all Our Subjects, that Appeals should be allowed, in all Civil Causes, from the Courts in Our Plantations; it is therefore Our Will and Pleasure, that, when the several Courts and Offices necessary for the Administration of Justice shall have been settled, appointed and confirmed, in Consequence of the Power vested in You by Our Commission under Our Great Seal and by these Our Instructions, You do, as near as different Circumstances will admit, conform yourself to the Regulations prescribed in the Instructions given to Our Governor of Nova Scotia in respect to such Appeals, Copies of which Instructions are hereunto annexed.

18. You are, with the Advice and Consent of Our Council in the Province under your Government, to take especial Care to regulate all Salaries and Fees belonging to Places, or paid upon Emergencies, that they be within the Bounds of Moderation, and that no Exaction be made on any Occasion whatsoever;[2] as also that Tables of all Fees be publickly hung up in all Places where such Fees are to be paid; and You are to transmit Copies of all such Tables of Fees to Our Commissioners for Trade and Plantations, in order to be laid before Us.

Section 19 enjoins prompt communication of all official papers to the Lords of Trade and Plantations.

20. You shall not appoint any Person to be a Judge or Justice of the Peace, without the Advice and Consent of the Majority of the Members of Our Council, present in Council; nor shall You execute yourself, or by Deputy,

[1] Copies were appended of the articles referring to this in the instructions given to Governor Charles Lawrence, of Nova Scotia.

[2] The fees exacted were at first excessive, and bitterly complained of by the French-Canadians. A better system was introduced by Carleton in 1770 (see pp. 69, 70), but did not wholly put a stop to complaints.

Digitized by Google

any of the said Offices; and it is Our further Will and Pleasure, that all Commissions, to be granted by You, to any Person or Persons to be Judges or Justices of the Peace, or other necessary Officers, be granted during Pleasure only.

21. You shall not displace any of the Judges, Justices of Peace, or other Officers or Ministers, without good and sufficient cause, which You shall signify in the fullest and most distinct manner to Our Commissioners for Trade and Plantations, in order to be laid before Us, by the first Opportunity after such Removals.

Section 22 enjoins the impartial administration of justice.

23. You are to take Care, that all Writs be issued in Our Name throughout the Province under your Government.

24. Whereas there are several Offices in Our Plantations granted under the Great Seal of Great Britain, and Our Service may be very much prejudiced by reason of the Absence of the Patentees, and by their appointing Deputies not fit to officiate in their stead; You are therefore to inspect such of the said Offices as are in the Province under your Government, and to inquire into the Capacity and Behaviour of the Persons exercising them, and to report thereupon, to Our Commissioners for Trade and Plantations, what You think fit to be done or altered in relation thereunto; and You are, upon the Misbehaviour of any of the said Patentees or their Deputies, to suspend them from the Execution of their Office, till You shall have represented the whole Matter unto Us, and received Our Directions therein; And in case of the Death of any such Deputy, it is Our express Will and Pleasure, that You take Care that the Person appointed to execute the Place, until the Patentee can be informed thereof and appoint another Deputy, do give sufficient Security to the Patentee, or, in case of Suspension, to the Person suspended, to be answerable to him for the Profits accruing during such Interval by Death, or during such Suspension, in case We shall think fit to restore the Person suspended to his Place again. It is nevertheless Our Will and Pleasure, that the Person executing the Place during such Interval by Death or

Digitized by Google

Suspension, shall, for his Encouragement, receive the same Profits as the Person dead or suspended did receive; And it is Our further Will and Pleasure, that, in case of a Suspension of a Patentee, the Person appointed by You to exercise the Office during such Suspension, shall receive a Moiety of the Profits which would otherwise become due to such Patentee, giving Security to such Patentee to be answerable to him for the other moiety, in case We shall think fit to restore him to his Office again; And it is Our further Will and Pleasure, that You do countenance and give all due Encouragement to all Our Patent Officers in the Enjoyment of their legal and accustomed Fees, Rights, Privileges and Emoluments, according to the true Intent and Meaning of their Patents.

Section 25 forbids Murray to grant any patent place save in accordance with Section 24.

Section 26 excuses officers of the Customs from serving as jurors or in the militia "unless in case of absolute necessity."

Section 27 empowers Murray and his deputy to fill vacant places in the Customs in the absence of the Surveyor General of Customs.

28. And whereas We have stipulated, by the late Definitive Treaty of Peace concluded at Paris the 10th Day of February 1763, to grant the Liberty of the Catholick Religion to the Inhabitants of Canada, and that We will consequently give the most precise and most effectual Orders, that Our new Roman Catholick Subjects in that Province may profess the Worship of their Religion, according to the Rites of the Romish Church, as far as the Laws of Great Britain permit; It is therefore Our Will and Pleasure, that You do in all things regarding the said Inhabitants, conform with great Exactness to the Stipulations of the said Treaty in this respect.

29. You are, as soon as possible, to summon the Inhabitants to meet together, at such Time or Times, Place or Places, as You shall find most convenient, in order to take the Oath of Allegiance, and make and subscribe the Declaration of Abjuration mentioned in the aforesaid Act passed in the first Year of the Reign

Digitized by Google

of King George the First, for the further Security of His Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants, and for extinguishing the Hopes of the pretended Prince of Wales, and his open and secret Abettors; which Oath shall be administered to them by such Person or Persons as You shall commissionate for such Purpose; and in case any of the said French Inhabitants shall refuse to take the said Oath, and make and subscribe the Declaration of Abjuration, as aforesaid, You are to cause them forthwith to depart out of Our said Government.

30. And it is Our further Will and Pleasure, that all such Inhabitants, possessing the Religion of the Romish Church, do, at all such Meetings, or at such other Time or Times as You shall think proper, and in the Manner You shall think least alarming and inconvenient to the said Inhabitants, deliver in upon Oath an exact Account of all Arms and Ammunition, of every Sort in their actual possession, and so, from time to time, of what they shall receive into their Possession, as aforesaid.

31. You are as soon as possible to transmit to Us, by Our Commissioners for Trade and Plantations, an exact and particular Account of the Nature and Constitution of the several Religious Communities of the Romish Church, their Rights, Claims, Privileges and Property, and also the Number, Situation and Revenue of the several Churches heretofore established in Our said Province, together with the Number of Priests or Curates officiating in such Churches.

32. You are not to admit of any Ecclesiastical Jurisdiction of the See of Rome, or any other foreign Ecclesiastical Jurisdiction whatsoever in the Province under your Government.[1]

33. And to the end that the Church of England may

[1] The question of how the French Canadians were to obtain a supply of duly consecrated priests was for some years left unsettled. The Imperial Government was not averse to an arrangement, but feared the explosion of anti-Catholic feeling which might have been caused by bringing the matter before Parliament. In 1766 the French Canadian clergy were allowed to choose one of themselves as Bishop. Their choice fell on Mgr. Briand, who was consecrated in Paris, and who filled his difficult position with modesty and decorum. See Kingsford, *History of Canada*, v. 175, and a memorial of Mgr. Plessis of May 15, 1812, summarized in Garneau, *Histoire du Canada* (4th edition), iii. 156-160.

Digitized by Google

be established both in Principles and Practice, and that the said Inhabitants may by Degrees be induced to embrace the Protestant Religion, and their Children be brought up in the Principles of it; We do hereby declare it to be Our Intention, when the said Province shall have been accurately surveyed, and divided into Townships, Districts, Precincts or Parishes, in such manner as shall be hereinafter directed, all possible Encouragement shall be given to the erecting Protestant Schools in the said Districts, Townships and Precincts, by settling, appointing and allotting proper Quantities of Land for that Purpose, and also for a Glebe and Maintenance for a Protestant Minister and Protestant School-Masters; and You are to consider and report to Us, by Our Commissioners for Trade and Plantations, by what other means the Protestant Religion may be promoted, established and encouraged in Our Province under your Government.

34. And You are to take especial Care, that God Almighty be devoutly and duly served throughout your Government, the Book of Common Prayer, as by Law established, read each Sunday and Holyday, and the blessed Sacrament administered according to the Rites of the Church of England.

35. You are not to prefer any Protestant Minister to any Ecclesiastical Benefice in the Province under your Government, without a Certificate from the Right Reverend Father in God the Lord Bishop of London,[1] of his being conformable to the Doctrine and Discipline of the Church of England, and of a good Life and Conversation; And if any Person hereafter preferred to a Benefice shall appear to You to give Scandal, either by his Doctrine or Manners, You are to use the best Means for his Removal.

Section 36 appoints each minister head of the local vestry.

Section 37 orders Murray to respect "the Ecclesiastical jurisdiction of the Lord Bishop of London."

[1] From an early date the colonial Church had been more or less officially under the Bishop of London. Previous to the Revolution there was no Bishop in the American colonies. Inglis, the first Church of England Bishop in Nova Scotia, arrived in 1787; Mountain, the first in the province of Quebec, in 1793. See Mockridge, *The Bishops of Canada and Newfoundland*. 1896.

Digitized by Google

Section 38 requires schoolmasters to obtain a licence from the Bishop of London.

39. And You are to take especial Care, that a Table of Marriages established by the Canons of the Church of England be hung up in all Places of public Worship, according to the Rites of the Church of England.

Section 40 orders the suppression of "every species of vice and immorality."

41. And whereas it is stipulated by the aforesaid Treaty concluded at Paris the 10th Day of February 1763, that the French Inhabitants, or Others, who have been Subjects of the Most Christian King in Canada, may retire with all Freedom and Safety wherever they shall think proper, and may sell their Estates, provided it be to Our Subjects, and bring away their Effects, as well as their Persons, without being restrained in their Emigration under any Pretence whatsoever, except that of Debts, or criminal Prosecution, and that the Time limited for the Emigration shall be fixed to the space of Eighteen months, to be computed from the Day of the Exchange of the Ratifications of the Treaty; You are therefore in all things to conform yourself to this Stipulation, and to take care, that such of the French Inhabitants as intend to remove within the Time limited, be not obstructed or impeded, provided they do not sell their Estate to Others than His Majesty's Subjects, and that, so long as they remain under your Government, they do in all things conform thereto in like manner as Our other Subjects.[1]

Section 42 orders the registration of all grants of land by "all and every the French inhabitants in Our said Province, who are now possessed of Lands within the said Province, in virtue of Grants or Concessions made before the signing of the Preliminary Articles of Peace on the third day of November, 1762."

[1] There has been considerable dispute with regard to the number who thus emigrated. See Garneau, *op. cit.*, ii. 393; Kingsford, *op. cit.*, iv. 464; Munro, *The Seigniorial System in Canada*, pp. 192, 204.

Digitized by Google

Section 43 ordains that any irregularity appearing in such grants is to be reported to the Commissioners of Trade and Plantations.

Section 44 ordains a full survey of the province; "But as the making of such Survey will be a work of great Length, You are in the meantime to carry on Settlements upon that Plan, which shall appear to You to be most expedient from the best Information You can collect."

Section 45 ordains the laying out of townships, "of about Twenty Thousand Acres, having as far as may be, Natural Boundaries extending up into the Country, and comprehending a necessary Part of the River of St. Lawrence, where it can be conveniently had."

Section 46 orders him to mark out a site for a town in each township, "taking care that the said Town be laid out upon, or as near as conveniently may be, to some navigable River, or the Sea Coast;" and reserve land "For erecting Fortifications, and Barracks, where necessary, or for other Military or Naval Services, and more particularly for the Growth and Production of Naval Timber, if there are any Wood-lands fit for that Purpose."

47. And it is Our further Will and Pleasure, that a particular Spot, in, or as near each Town as possible, be set apart for the building a Church, and four Hundred Acres adjacent thereto allotted for the Maintenance of a Minister, and two Hundred for a Schoolmaster.

Section 48 orders him to enjoin all possible speed on the surveyors.

Section 49 directs that the surveyors are to "take an Oath for the due Performance of their Offices."

Section 50 ordains that grants of land shall be given only to persons who prove "that they are in a condition to cultivate and improve the same, by settling thereon, in

Digitized by Google

Proportion to the Quantity of Acres desired, a sufficient Number of White Persons and Negroes."[1] All such grants, "with a faithful and exact Survey of the Lands so petitioned for," are to be registered at the auditor's office within six months.

Section 51 sets limits to the amount of land which may be granted to one person or family, and lays down conditions as to clearing, improving, etc.

52. And it is Our further Will and Pleasure, that in all Grants of Land to be made by You, as aforesaid, regard be had to the profitable and unprofitable Acres, so that each Grantee may have a proportionable Number of one Sort and the other; as likewise that the Breadth of each Tract of Land, to be hereafter granted, be one Third of the Length of such Tract; and that the Length of each Tract do not extend along the Banks of any River, but into the Main Land, that thereby the said Grantees may have each a convenient Share of what Accommodation the said River may afford for Navigation or otherwise.

Section 53 orders him to encourage the growing of hemp and flax.

Section 54 orders the reservation to the Crown of all "Woods producing Trees fit for Masting for Our Royal Navy, and other useful and necessary Timber for Naval Construction," and advises him to consider whether it would not be wise to prohibit saw-mills save under a special licence from himself.

Section 55 orders the reservation to the Crown of the iron works at St. Maurice, in the district of Three Rivers, and of the adjoining territory.

Section 56 orders the publication of a proclamation,

[1] Chiefly owing to the climate, negro slavery never took root in Canada. In Upper Canada it was abolished by a law of 1793 (see Kingsford, *op. cit.*, vii. 426). In Lower Canada it was never formally abolished (see Garneau, *op. cit.*, iii. 90).

Digitized by Google

embodying the "Terms and Conditions upon which Lands will be granted in Our said Province."

Section 57 orders the filing of all instructions and regulations regarding land grants.

Section 58 orders the preparation of a Bill to insure the regular and effectual collection of quit-rents.

Section 59 orders the regular annual inspection of land grants by the Surveyor-General.

Section 60 orders him "to cultivate and maintain a strict Friendship and good Correspondence" with the Indians, especially by making treaties and delivering presents.

61. And You are to inform yourself with the greatest Exactness of the Number, Nature and Disposition of the several Bodies or Tribes of Indians, of the manner of their Lives, and the Rules and Constitutions, by which they are governed or regulated. And You are upon no Account to molest or disturb them in the Possession of such Parts of the said Province, as they at present occupy or possess; but to use the best means You can for conciliating their Affections, and uniting them to Our Government, reporting to Us, by Our Commissioners for Trade and Plantations, whatever Information You can collect with respect to these People, and the whole of your Proceedings with them.

62. Whereas We have, by Our Proclamation dated the seventh day of October in the Third year of Our Reign, strictly forbid, on pain of Our Displeasure, all Our Subjects from making any Purchases of Settlements whatever, or taking Possession of any of the Lands reserved to the several Nations of Indians, with whom We are connected, and who live under Our Protection, without Our especial Leave for that Purpose first obtained; It is Our express Will and Pleasure, that You take the most effectual Care that Our Royal Directions herein be punctually complied with, and that the Trade with such of the said Indians as depend upon your Government be carried on in the Manner, and under the Regulations prescribed in Our said Proclamation.

63. You are to use your best Endeavours in improving

Digitized by Google

the Trade of those Parts, by settling such Orders and Regulations therein, with the Advice of Our said Council, as may be most acceptable to the Generality of the Inhabitants. And it is Our express Will and Pleasure, that You do not, upon any Pretence whatever, upon pain of Our highest Displeasure, give your Assent to any Law or Laws for setting up any Manufactures and carrying on any Trades, which are hurtful and prejudicial to this Kingdom ; and that You do use your utmost Endeavours to discourage, discountenance and restrain any Attempts which may be made to set up such Manufactures, or establish any such Trades.

64. Whereas by the 5th and 6th Articles of the Treaty of Peace and Neutrality in America, concluded between England and France the 6th-16th Day of November 1686, the Subjects and Inhabitants of each Kingdom are prohibited to trade and fish in all Places possessed, or which shall be possessed by the other in America ; and if any Ships shall be found trading contrary to the said Treaty, upon due Proof the said Ships shall be confiscated : but in case the subjects of either King shall be forced by Stress of Weather, Enemies, or other Necessity into the Ports of the other in America, they shall be treated with Humanity and Kindness, and may provide themselves with Victuals, and other Things necessary for their Sustenance, and the Reparation of their Ships, at reasonable Rates ; provided they do not break bulk, nor carry any Goods out of their Ships, exposing them to Sale, nor receive any Merchandize on board, under Penalty of Confiscation of Ship and Goods ; It is therefore Our Will and Pleasure, that You signify to Our Subjects under your Government the Purport and Intent of the abovesaid two Articles ; and that You take particular Care, that none of the French Subjects be allowed to trade from their said Settlements to the Province under your Government, or to fish upon the Coast thereof.

Section 65 gives regulations for the disposal of forfeitures and escheats.

Section 66 orders stringent measures to be taken against pirates, who are to be sent to New York for trial.

Section 67 gives him the powers and duties of "Vice-Admiral of Our said Province."

Digitized by Google

Section 68 forbids the carrying by merchant ships or privateers of "Colours borne by Our Ships of War."

69. And whereas there have been great Irregularities in the manner of granting Commissions in the Plantations to private Ships of War, You are to govern yourself, whenever there shall be Occasion, according to the Commissions and Instructions granted in this Kingdom: But You are not to grant Commissions of Marque or Reprizal against any Prince or State, or their Subjects, in Amity with Us, to any Person whatsoever, without Our special Command.

Section 70 directs that any ship carrying letters in time of war is to "put such Letters into a Bag, with a sufficient weight to sink the same immediately, in Case of imminent Danger from the Enemy."

71. And whereas, in Time of War, the Merchants and Planters in Our Plantations in America did correspond and trade with Our Enemies, and carry Intelligence to them, to the great Prejudice and Hazard of Our said Plantations; You are therefore by all possible Methods to endeavour to hinder such Trade and Correspondence in Time of War.[1]

Section 72 orders him to send to the Commissioners for Trade and Plantations a full report of the nature, geography and prospects of the country, of its population, and of the "Nature, Form and Constitution" of the land tenure, civil government, and system of judicature under French rule.

73. You are from time to time to send unto Us, by Our Commissioners for Trade and Plantations, as aforesaid, an Account of the Increase and Decrease of the Inhabitants, Whites and Blacks, and also an Account of all Persons born, christened and buried.

[1] See Pitt's letter of August 23, 1760, and the replies of the Governors, in *Correspondence of William Pitt with Colonial Governors* (2 vols.; Macmillan, 1906).

Digitized by Google

Section 74 orders him to send every six months a full account in duplicate of all forts, fortifications, and naval stores.

75. You are from time to time to give an Account, what Strength your Neighbours have by Sea and Land, and of the Condition of their Plantations, and what Correspondence You keep with them.

76. And in case of any Distress of any other of Our Plantations, You shall, upon Application of the respective Governors thereof unto you, assist them with what Aid the Condition and Safety of Our Province under Your Government can spare.

Section 77 gives him full power to deal with any special cases not included in these instructions, "provided always that You do not, by Colour of any Power or Authority hereby given You, commence or declare War without our Knowledge and particular Commands therein."

Section 78 orders him not to remain constantly in Quebec, but to visit all parts of his government.

79. And whereas great Prejudice may happen to Our Service, and the Security of the Province, by your Absence from those Parts, You are not, upon any Pretence whatsoever, to come into Europe, without having first obtained Leave for so doing from Us under Our Sign Manual and Signet, or by Our Order in Our Privy Council; Yet nevertheless in case of Sickness, You may go to South Carolina, or any other of Our Southern Plantations, and there stay for such Space as the Recovery of your Health may absolutely require.

Section 80 gives rules for the carrying on of the government in case of his absence or death.

Section 81 ordains that in his absence half the salary shall go to his substitute.

82. And You are upon all Occasions to send unto Our Commissioners for Trade and Plantations only, a particular

Digitized by Google

Account of all your Proceedings, and of the Condition of Affairs within your Government, in order to be laid before Us; provided nevertheless, whenever any Occurrences shall happen within your Government of such a Nature and Importance as may require Our more immediate Directions by One of Our Principal Secretaries of State, and also upon all Occasions and in all Affairs wherein You may receive Our Orders by One of Our Principal Secretaries of State, You shall in all such Cases transmit to Our Secretary of State only an Account of all such Occurrences, and of your Proceedings relative to such Orders.

Digitized by Google

THE QUEBEC ACT

THIS Act, entitled "An Act for making more Effectual Provision for the Government of the Province of Quebec, in North America," was brought before the House of Lords by the Earl of Dartmouth, President of the Board of Trade and Plantations, on May, 2, 1774, and passed without any opposition on May 17. From May 26 till June 13 it was discussed in the House of Commons. Several witnesses were heard by the House, sitting in Committee, and some unimportant amendments were made.

The extracts which follow from the debates in the House of Commons, and from the evidence given there, are taken from the volume published at London in 1839 by J. Wright, from the shorthand notes of Sir Henry Cavendish, who was from 1768 to 1774 Member for Lostwithiel. The original is among the Egerton Manuscripts, in the British Museum.

On May 26 the debate in the House of Commons was begun by Thomas Townshend, later Viscount Sydney, who twitted the Ministry with their slowness in introducing the Bill, and poked fun at the law officers of the Crown, who were supposed to be extremely lukewarm in its favour.

The defence of the Bill was undertaken by Lord North, First Lord of the Treasury and Chancellor of the Exchequer:

Digitized by Google

The first thing objected to by the honourable gentleman is, the very great extent of territory given to the province. Why, he asks, is it so extensive? There are added, undoubtedly, to it two countries which were not in the original limits of Canada, as settled in the proclamation of 1763; one, the Labrador coast, the other, the country westward of the Ohio and the Mississippi, and a few scattered posts to the west. Sir, the addition of the Labrador coast has been made in consequence of information received from those best acquainted with Canada, best acquainted with the fishery upon that coast, who deem it absolutely necessary for the preservation of that fishery, that the Labrador coast should no longer be considered as part of the government of New York, but be annexed to that country. With respect to the other additions, three questions very fairly occur. It is well known that settlers are in the habit of going to the interior parts from time to time. Now, however undesirable, it is open to Parliament to consider, whether it is fit that there should be no government in the country, or, on the contrary, separate and distinct governments; or whether the scattered posts should be annexed to Canada. The House of Lords have thought proper to annex them to Canada; but when we consider that there must be some government, and that it is the desire of all those who trade from Canada to those countries, that there should be some government, my opinion is, that if gentlemen will weigh the inconveniences of separate governments, they will think the least inconvenient method is to annex those spots, though few in population great in extent of territory, rather than to leave them without government at all, or make them separate ones. Sir, the annexation likewise is the result of the desire of the Canadians, and of those who trade to those settlements, who think they cannot trade with safety as long as they remain separate.

The honourable gentleman next demands of us, Will you extend into those countries the free exercise of the Romish religion? Upon my word, Sir, I do not see that this bill extends it further than the ancient limits of Canada; but if it should do so, the country to which it is extended is the habitation of bears and beavers; and all these regulations, which only tend to protect the trader as far as they can protect him, undoubtedly cannot be considered oppressive to any of the inhabitants in that part of the

Digitized by Google

world, who are very few, except about the coast, and at present in a very disorderly and ungovernable condition. The general purpose is undoubtedly to give a legislature to that country. It was very much, I believe, the desire of every person, if it were possible, to give it the best kind of legislature; but can a better legislature be given than that of a governor and council? The honourable gentleman dislikes the omitting the assembly;[1] but the assembly cannot be granted, seeing that it must be composed of Canadian Roman Catholic subjects, otherwise it would be oppressive. The bulk of the inhabitants are Roman Catholics, and to subject them to an assembly composed of a few British subjects would be a great hardship. Being, therefore, under the necessity of not appointing an assembly, this is the only legislature you can give the Canadians, and it is the one under which they live at present. The governor and council really have been the legislature there ever since our conquest of it, and it is now put under some regulation. Hitherto, France has conducted the business—that is all the difference; if we do nothing, it must remain in the hands of the governor and council. The question is, whether, so regulated, this is not better. All the other colonies have been governed by a governor and council; it is not, therefore, so totally anomalous. The honourable gentleman objects to the want of a quorum. It is only giving full notice to all whose duty it is to attend, and when they do attend, things are to be decided by the majority, as in all other assemblies.

Now, Sir, with regard to giving French law—if gentlemen will remember, the most material part of the criminal law is to be according to English law. The civil law of Canada certainly is to be the French law: but, Sir, I understand the establishing of these laws to be given as the basis upon which the governor and legislative council are to set out. Sir, you would not send the governor and council to choose their own constitution—to choose their own laws entirely. You must tell them from what laws they are to take their departure. It has been thought better calculated to secure the happiness of the Canadians, and more beneficial for all who live in the country,

[1] The Proclamation of 1763 had promised an Assembly "so soon as the state and circumstances of the said colonies will admit thereof." See Instructions to Murray, § 11.

Digitized by Google

that they should have the civil law[1] of Canada, and not that of England. If the Canadian civil law is incompatible with the present condition and wishes of the colony, the governor and council will have power to alter it. But there must be a general basis; there must be a law established, ready to be amended and altered as occasions shall arise, and as the circumstances of the colony shall require. It has been the opinion of very many able lawyers, that the best way to establish the happiness of the inhabitants is to give them their own laws, as far as relates to their own possessions. Their possessions were marked out to them at the time of the treaty; to give them those possessions without giving them laws to maintain those possessions, would not be very wise. The French law may be worse than the English, but the particular portions for which we have the highest value ourselves are a part of our political law, and a part of our criminal law. These may be acted on in Canada, seeing that the criminal law has been submitted to for nine years, and is, I dare say, approved of by the Canadians, because it is a more refined and a more merciful law than the law of France.

As to the free exercise of their religion, it likewise is no more than what is confirmed to them by the treaty, as far as the laws of Great Britain can confirm it. Now, there is no doubt that the laws of Great Britain do permit the very full and free exercise of any religion, different from that of the Church of England, in any of the colonies. Our penal laws do not extend to the colonies; therefore, I apprehend, that we ought not to extend them to Canada. Whether it is convenient to continue or to abolish the bishop's jurisdiction, is another question. I cannot conceive that his presence is essential to the free exercise of religion; but I am sure that no bishop will be there under papal authority, because he will see that Great Britain will not permit any papal authority whatever in the country. It is expressly forbidden in the Act of Supremacy.

I dare say, Sir, I have not given an answer to many of

[1] The civil law of Canada was the *coutume de Paris*, codified in 1510 and introduced by royal *arrêt* into New France by Louis XIV. in 1664. In practice it had been greatly modified and amended by the personal supervision exercised by the Intendant. See W. B. Munro: *The Seigniorial System in Canada*, and Carleton's evidence on p. 37.

Digitized by Google

the questions put to me by the honourable gentleman; nor do I recollect whether I have explained what I take to be the purpose of the present bill. It certainly gives to the Canadians many of their laws and customs; which laws and customs can be safely given to them. If alteration in those laws and customs should be deemed necessary, there is a legislature established, which will be ready to make those alterations. In a general plan of government, it is not possible to enter into a detail of what is proper, or what is improper, in Canada: it must be left to the legislature on the spot to consider all their wants and difficulties.[1] The present bill will give laws, the principal laws, from which the legislature ought to take their departure—criminal law, civil law, political law. That is the purpose of the bill. It has appeared to be the best plan that could at present be devised; and it requires and deserves the immediate attention of the House. The honourable gentleman asks, why, before it was introduced into the House of Lords immediately after Easter, full notice was not given, that it would come down here? Sir, we are not to blame for the omission: there is, however, abundance of time to go through the bill, to correct, to approve, or to amend it. His Majesty's message recommended Parliament to take up the subject:[2] and as soon as it was in a fit state to be laid before the other House, I am confident the noble lord brought it forward.

Sir, the honourable gentleman proposes to limit the bill in point of time. That will be a proposition for the committee to consider: it is not now proper to be entertained. If you mean to have the bill exist even but for a year, you will read it now a second time. The question of duration is a question that will come on hereafter; it is not a proper one for the present moment. I own I shall not be for a

[1] Johnstone, a Whig member, extended this principle further than Lord North desired, and insisted that those on the spot should have full power of dealing with the Indians: "The great maxim to be learned from the history of our colonization is—let men manage their own affairs; they will do it better on the spot than those at a distance of six hundred miles can possibly do it for them."

[2] The King, in a message of the 7th of March, had called upon the House of Commons "to enable him effectually to take such measures as might be most likely to put an immediate stop to the present disorders in North America, and also to take into their most serious consideration, what regulations and permanent provisions might be necessary to be established, for better securing the just dependance of the colonies upon the Crown and Parliament of Great Britain."

Digitized by Google

limitation, and I shall be ready to submit my reasons; but if the committee should think proper to alter it, I must acquiesce, rather than leave the Canadians without any legislature at all. Better far to give them some legislature, than leave them three or four years in their present situation.

Mr. *Dunning*.[1]—Sir; late as it is in the session, and thin as is the attendance of the House, I should hold myself inexcusable, if I suffered a bill of this importance to pass through the present stage, without delivering my opinion upon it, and without giving it as much opposition as can be given by a single negative. Having prefaced thus much, it will be proper for me to state the reasons that have induced me to act in this manner. I collect, and am sure it is to be collected, from what fell from the noble lord, in answer to the honourable gentleman's question, whether this was meant to be a permanent measure, or to be qualified and made temporary by some provision, which it was the business of the committee to add, that it was not the intention of the noble lord that it should be temporary, but that we are to take it in its present form, for we can get it in no other.

Conceiving therefore, Sir, from the omnipotence of the noble lord, that this bill will be perpetual, not temporary, I see the mischief in a light still more mischievous. I see the bill stripped of all those reasons in its favour, which my imagination had enabled me to foresee might have been assigned for it. Sir, the bill is as extensive as any bill that was ever offered to the consideration of Parliament. Its direct object is to take from a large number of the King's subjects that constitution which was given to them ten years ago; to take that constitution from them, and to give them another in the place of it. Have, Sir, those subjects expressed a wish to part with what has been given them? Have they expressed a wish to have the one which is to be given in the place of it? I apprehend no such wish has been communicated to this House; and if any servant of government in that country has sent home a representation to that effect, such representation is equally unknown to me, and I apprehend to the rest of members of this House; but if any such representation

[1] At the conclusion of Lord North's speech, Townshend again objected to so important a bill being hurried through at the end of the session.

Digitized by Google

is intended to be made, I should wish this House to be acquainted with it.

The provisions of this bill so far partake of all the American regulations of this year,[1] that they are offered at a time, and are to be carried through in a time, which precludes the individuals interested from being heard; whether they do desire, or do not desire, to show how their interests are affected; whether they expect benefit, or apprehend mischief therefrom. The first object of the bill is to make out that to be Canada, which it was the struggle of this country to say, was not Canada. Now, Sir, if this province should ever be given back to its old masters—and I am not without an inclination to think, that the best way would be to give it back to its old masters—if it should ever become right to give back Canada, with what consistency can a future negociator say to France, we will give you back Canada; not that Canada which you asserted to be Canada, but that stated in the proclamation, having discovered that we were mistaken in the extent of it; which error has been corrected by the highest authority in this country. Then, suppose Canada thus extended should be given back to France, the English settled there will then have a line of frontier to an extent undefined by this bill; for this country is bounded by the Ohio upon the west—God knows where! I wish God may not alone know where. I wish any gentleman would tell us where. I observe in this description of the frontier, a studied ambiguity of phrase. I cannot tell what it means; but I conjecture that it means something bad. The Ohio is stated as a boundary confirmed by the Crown; but what act, what confirmation by the Crown, has passed upon this subject? I know of no such act, of no such confirmation. I know, by the terms of the charter, the colonists suppose, and I think they are well grounded in the supposition, that they are entitled to settle back as far as they please to the east, to the sea, their natural boundary. They did not like a different barrier. I know some assert this right, and that others content themselves with a less extensive claim. Whether so extensive a claim has been allowed I know not; but I do understand, in point of fact, that there has been long subsisting a dispute about the western frontier, which was

[1] The allusion is to the Acts directed against Massachusetts, passed in 1774 (14 George III., c. 19, 39, and 45).

Digitized by Google

never discussed, still less decided : and when this bill shall become a law, those colonists will then learn, that this Parliament, at this hour, have decided this dispute, without knowing what the dispute was, and without hearing the parties.

Looking, Sir, at the map, I see the river Ohio takes its rise in a part of Pennsylvania, and runs through the province of Virginia ; that, supposing myself walking down the river, all the country to the right, which is at this moment a part of the province of Virginia, has been lopped off from this part, and becomes instead a part of Canada ; for we tell them, the instant they pass that river, which by the terms of the charter they may pass, that matter is now for ever at rest ; the moment, say we, you get beyond that river, you are in the condition in which this bill professes to put Canada ; the Indian finds himself out of the protection of that law under which he was bred. Sir, do we treat the proprietors of the next province, Indiana, well ? Some of them are resident in this country. I apprehend, at this very hour, they are unapprized of this bill to stop them. To decide upon questions without exactly knowing whether such questions are existing, is an obvious injustice.

As to extending the country, this is the inconvenience : it is abundantly safer to have regular posts of arms from the north to the south. Forts may be erected, and lawfully erected ; troops may be convened, and lawfully convened, whenever there is occasion to use them, to take possession of all the English colonies. This seems to me to be a danger, which this extent of territory threatens. These are the mischiefs ; and I should be glad now to learn, what is the good intended to be effected by this extent of territory ? The noble lord says,—it is to comprise a few straggling posts, under some form of government. If I should admit the necessity of so comprising a few straggling posts, does it follow, that this is a form of government fit to be established ? Does it follow, from any local reasons, why Canada should be so extensive ? or that the English settlers should likewise be involved ? What objections are there to making more settlements ? Whatever they are, they will be found trivial, compared to the consequence of involving this whole region in this form of government.

However, let us see, Sir, what is the form of government, for the sake of which this bill is to be supported. The

Digitized by Google

form of government is this. The Roman Catholic religion is established by law. All the arguments urged by the noble lord, tending to shew that, *de jure*, the Roman Catholics are entitled to a full toleration, I admit to be well founded in law; but does that imply, that the same toleration should be given to them everywhere? Upon the last part of the case, different gentlemen may entertain different opinions. My opinion of toleration is, that nothing can be more impolitic than to give establishment to that religion which is not the religion of our own country. Among the circumstances that unite countries, or divide countries, a difference in religion has ever been thought to be the principal and leading one. The Catholic religion unites France, but divides England. Without going further into the subject, it suffices for me to say, that the religion of England seems to be preferable to the religion of France, if your object is to make this an English colony. When one sees that the Roman Catholic religion is established by law, and that the same law does not establish the Protestant religion, the people are, of course, at liberty to choose which they like. Permission is given to the governor, to do what he will with the Protestant religion; and this, to those who are gone there in pursuance of the proclamation, may give encouragement; but the bill gives them none. Are we, then, to establish the Roman Catholic religion, and tolerate the Protestant religion? I conceive so; for this distinction is founded in the terms of the bill.

The noble lord says, the free exercise of religion was promised by the treaty of peace—was promised by the proclamation. Does the noble lord say that this bill gives them nothing more? If the noble lord will do me the favour of casting his eye a little down the same page, he will see that the clergy of the Roman Catholic religion are reinstated in all their accustomed rights and dues. What, Sir, are those accustomed rights and dues? I wish some gentleman would do the House the favour to inform them, what is the extent of the rights and dues of the Roman Catholic clergy. I take leave to suppose that, under the denomination of Catholic clergy, the bishops' rights and dues are included. The noble lord says, there is no papal jurisdiction. I wish to be told, what is the authority by which he becomes a bishop? I know he becomes such by consecration in France; but, in order to

Digitized by Google

qualify him for this present office, the noble lord will be so good as to tell us what the act appoints. We shall then be able to judge how far he considers himself of papal constitution, or instituted by government. Sure I am, if he is allowed to exercise this right, he will be found to insist upon it.[1]

The honourable gentleman who opened the debate asked, whence this bill came? He was only answered, that it came from the House of Lords. I am glad it is imputable to any house rather than our own. I believe no individual in this House will own it. I believe that I shall not do injustice to my learned friends opposite—that I shall not be found a false prophet—when I take leave to say, that they will disown it. But if, Sir, it was neither a measure of any man in that House, nor in this House, does it come from the King's servants in the law department in Canada? Nobody respects them more than I do; nobody knows them better. I am persuaded, that the degree of respect in which they are held depends upon the degree of knowledge which all men have of them. But we are not left in the dark upon that subject; for one of those gentlemen[2] has communicated to the world his ideas upon the subject of this bill; and whoever has taken the pains to read his work will have found, that nothing can be more diametrically opposite to the bill, than the opinion that gentleman entertains upon this subject. It is not proper for me to ask—it is not proper for me to answer, even if I was asked myself—what his opinions are; but I have good authority for knowing his opinions upon things in general. I know him to be so good an Englishman, so good a lawyer, so good, so firm a friend of this constitution, that for his sake I shall hope the House will not suspect he has anything to do with this business. From that congregate and aggregate body, then, the House of Lords, this mischief comes; but are we to cherish it? It is easy to see what treatment it will meet with here. This proposed constitution for Canada does this: it denies to English subjects the English birthright, trial by jury.

[1] A passage is here omitted in which the speaker argues in favour of trial by jury.

[2] François Masères, as Attorney-General of Quebec, had in 1771 drawn the draft of an Act for settling the laws of Quebec, which proposed to abolish the French law except with regard to real property. Masères was an able and honest man, but his Huguenot descent somewhat prejudiced him against the French Canadians.

Digitized by Google

Sir, the most valuable of their civil rights is taken from them by this bill. The honourable gentleman near me observes, that the Habeas Corpus is among those civil rights. Is that among the laws of Canada? I do not know what they are. I cannot put questions. I cannot see any man here who would be warranted in giving me an answer, if I did ask questions about those unknown laws of Canada. We know, however, so much of them, as to know that they are adopted from France. The Canadians brought them from France; and is it not among those laws, that the governor may issue a *lettre de cachet* to send away whom he pleases, to shut up whom he pleases ?[1] I know *lettres de cachet* are issued against persons not charged of any crime; not even suspected of any: some reasons have, notwithstanding, operated to make a man invisible for a time. This law of France I take to be transplanted to Canada by this bill. By the laws of England, a man may find his remedy: the laws of Habeas Corpus are among the laws of England: they existed at common law; in some instances, they are made more beneficial by the statute law. But when the laws of Canada are looked to in order to furnish redress, the same laws will, of course, refuse any redress. Is this a trifle, to leave the people of Canada in a situation which any man who hears me would shudder to be left in himself? Whether this legislative council has authority to add to the number of those laws—whether those laws are the groundwork, as the noble lord says, in conformity with which, according to the plan sent to them, this legislative council is expected to make new laws, in the spirit and temper of the old ones—I trust that those gentlemen who are now sending to Canada, to a district of this immense extent, a constitution of this nature, will not be found to furnish arguments in favour, either of abolishing the trial by jury, or of establishing the laws of France.

I see also, that this country is henceforward to be governed by a legislative council, consisting of seventeen at least, and not more than twenty-three. The governor may make and unmake his creatures, as they become fit tools for his purpose. They will therefore at all times,

[1] This Masères showed to be absurd. The issue of *lettres de cachet* belonged to the King of France alone, not to the provincial governors, and would in any case have been rendered inoperative by the Habeas Corpus Act.

Digitized by Google

while in their senses, be solicitous and anxious in endeavouring to guard against incurring his displeasure. The minister has nothing to do but issue his order: those individuals have nothing to do but obey. He will find the inhabitants at his disposal; because the inhabitants who are at his disposal are creatures of the minister. In my apprehension, Sir, if the King remained the sole legislator of the country, the condition of it would be better than when the governor is put in his place to exercise that power.

Sir, the bill professes ostensible good, but is pregnant with ostensible mischief. It is not adopted or avowed by any body, abroad or at home. All the answer the honourable gentleman received to his question was, "this is a bill that came from the House of Lords." If that circumstance alone is a sufficient reason for passing it, without any argument, to be sure the bill is so far entitled to the concurrence of this House; but if something more like a reason is thought necessary, I shall be glad to hear it; I shall be glad to have a ground to change my opinion. Until then, Sir, I shall certainly give this bill a decided negative.

The *Attorney-General, Edward* (afterwards Lord) *Thurlow*.—The honourable gentlemen are mistaken if they suppose that the bounds described embrace, in point of fact, any English settlement. It is undoubtedly true, if you read the French history, that the bounds prescribed neither are, nor ever were, the bounds of the province of Canada, as stated by the French; but let us consider it in a point of view more serious. Let us consider it established as an English province. The House has been told that this bill trenches considerably upon the claim of the other chartered provinces. I do not pretend to be extremely familiar with their bounds, but I apprehend Pennsylvania has never been stated by any of its proprietors to go one acre of land within the precincts of this new province. With regard to other chartered governments, there is no doubt that various contests to the north of Pennsylvania have arisen upon their bounds; and this has been stated, and allowed by His Majesty in his Privy Council; which, I suppose, was the occasion of introducing the phrase in this part of the bill. With regard to the more southern part of the country, I do not take it that Virginia has ever made a single claim within more than a hundred miles of the bounds prescribed for the province. The most extensive claim I ever heard of went

Digitized by Google

to what is called the Endless Mountains, just in a nook of the province of Virginia. I know of none that ever pretended to exceed that.[1] Upon the conquest of this country what was it incumbent to advice the King to do with respect to it? I have heard a great deal of the history of the famous proclamation of 1763; which, though not an act of Parliament, fares pretty much as ill as this proposed act appears to do; for I think it meets with nobody to avow it. The proclamation certainly gave no order whatever with respect to the constitution of Canada. It certainly, likewise, was not the finished composition of a very considerable and respectable person, whom I will not name, but went unfinished from his hands, and remained a good while unfinished in the hands of those to whom it was consigned afterwards. It professed to take no care of the constitution of Canada: it states all the acquisitions, both of the peopled countries and barren territories—the latter being many hundred times larger than the former—which were made in the course of the last war; and, speaking of them all in general, it declares to mankind, that his Majesty thought proper to divide them into certain distinct and separate governments; that it was in his Majesty's contemplation to give them a constitution, like that which had been given to the other colonies, as soon as the circumstances of the colony would admit of it; and it promised to settlers, expressly to invite them to settle, that, in the mean time, they should have the benefit of the laws of England. So ran the proclamation. Now, Sir, a proclamation conceived in this general form, and applied to countries the most distant, not in situation only, but in history, character, and constitution, from each

[1] Lord North afterwards said: "It was never intended that the bill should intrench upon other colonies. Whenever any proposal is made to us, whatever can tend to secure Pennsylvania and the other proprietaries shall meet with no opposition from me. The demand is so just and so reasonable, that, without hearing council, it ought to be complied with."

But there can be no doubt that this annexation to Canada of the western lands did greatly anger the American colonies, who had long considered them their hinterland. For this reason it was strongly objected to by the Opposition. Colonel Barré said: "The noble lord runs a frontier at the back of almost all our capital settlements . . . the measure carries in its breast something that squints and looks dangerous to the inhabitants of our other colonies in that country."

On September 5, 1774, the Act was formally protested against by the American Congress, sitting at Philadelphia.

Digitized by Google

other, will scarcely, I believe, be considered as a very well studied act of state, but as necessary immediately after the conquest. But, however proper that might be with respect to new parts of such acquisitions as were not peopled before, yet, if it is to be considered according to that perverse construction of the letter of it; if it is to be considered as creating an English constitution; if it is to be considered as importing English laws into a country already settled, and habitually governed by other laws, I take it to be an act of the grossest and absurdest and cruellest tyranny, that a conquering nation ever practised over a conquered country. Look back, Sir, to every page of history, and I defy you to produce a single instance, in which a conqueror went to take away from a conquered province, by one rough stroke, the whole of their constitution, the whole of their laws under which they lived, and to impose a new idea of right and wrong, of which they could not discern the means or the end, but would find themselves at a loss, and be at an expense greater than individuals could afford, in order to inform themselves whether they were right or wrong.[1] This was a sort of cruelty which, I believe, was never yet practised, and never ought to be. My notion, with regard to this matter, I will venture to throw out as crude and general. To enter into the subject fully, would require more discussion than the nature of such a debate as this will admit of. My notion is, that it is a change of sovereignty. You acquired a new country; you acquired a new people; but you do not state the right of conquest, as giving you a right to goods and chattels. That would be slavery and extreme misery. In order to make the acquisition either available or secure, this seems to be the line that ought to be followed—you ought to change those laws only which relate to the French sovereignty, and in their place substitute laws which should relate to the new sovereign; but with respect to all other laws, all other customs and institutions whatever, which are indifferent to the state of subjects and sovereign, humanity, justice and wisdom equally conspire to advise you to leave them to the people just as they were. Their happiness depends upon it; their allegiance to their new sovereign depends upon it. Sir, what happened at the

[1] See Lord Mansfield's Judgment in *Campbell v. Hall*, 1774, in *Documents illustrative of the Canadian Constitution.* Edited by W. Houston.

Digitized by Google

conquest? This proclamation being sent out in the manner mentioned, was not addressed to the Canadians. If it be true, that his Majesty may, according to the principle of law, or pursuant to the history of the law, of this country, universally and uniformly—(there is not an exception to the contrary)—give new laws to the country, in what manner is that to be done?—By an instrument not addressed to them? By an instrument, so far from adding anything to their laws, not mentioning them? But, it is said, they generally did understand, that such should be their constitution, without reference to them in particular. I wish gentlemen would go back to the proclamation in 1763, and I would ask them from what expression it is, that either the Canadians can discover or English lawyers advance, that the laws of Canada were all absolutely repealed, and that a new system of justice, as well as a new system of constitution, was by that instrument introduced. Sir, the consequence of that proclamation was, that commissions were granted to the governor, in the manner they were granted to the governor of New York on a former occasion.[1] The difference between the establishment of New York and the establishment of Canada was, as the difference of 1,700 and 120,000. It is true, there was likewise a commission of admiralty given in the English form; and a variety of other articles, known to antiquarians, not known in Canada. There was also a commission of oyer and terminer. The honourable and learned gentleman who spoke last made an objection to repealing all the present existing commissions. I do not know whether it had occurred to him to read the present existing commissions. If it had, I think he would not hesitate much upon repealing them; because the general commissions of oyer and terminer, &c. are temporary. The other commissions are, one to the court of King's Bench, and another to the court of Common Pleas. The commission to the court of King's Bench is to inquire, by the oath of good and lawful men of the country, into all crimes, causes of action, and upon issue; jumbling together the criminal and civil jurisdiction of the country. They were framed, I believe, in Canada. How they came to be so framed, I cannot imagine. The first thing discovered was that they were impracticable; not only impracticable with respect to the people, but impracticable

[1] 1664-5, after its capture from the Dutch. See Doyle: *The Middle Colonies*, pp. 136-9.

Digitized by Google

with respect to the commissions themselves. The people were so ignorant, not only of the form of our law, but with respect to personal actions, that it was totally impossible to execute them. If any dispute arose, there was no instance of the Canadians resorting to the English courts of justice ; but they referred it among themselves, for among themselves only could they find any idea of what they had been used to. I would ask any gentleman, whether, if the thing had been done according to some men's opinions, they could have afflicted any country with a greater curse, than an intricate system of laws, which they could not understand the terms or meaning of ?

With regard to the criminal law of the country, in the first place, it is more simple, in the next place it is more compulsory ; so they did, in point of fact, find their own way. The first thing that happened which I recollect in the history of Quebec, was, that the grand jury[1] desired to have all the accounts of the province laid before them ; and, in the next place, there were some very laudable, good Protestants among them, who desired that the Popery laws should be carried fully into execution. They lodged a general presentment against all the inhabitants of the colony for being Papists.

With regard to the civil laws, the whole was overturned. In their tenures, when any man found himself wronged by the French laws, he went to an English attorney, to know how to get righted. If wronged by the English laws, he was told, that a proclamation was no law. The consequence was, that the King lost all profit from tenures ; and in many other articles, such as transmutation of property, they were unwilling, because they had not the benefit of English laws, to pay anything to the King.

The state of confusion the country was reduced to, and individuals were reduced to, was beyond all manner of description. In this situation they remained uncorrected during all this compass of time ; and now the present bill is upbraided, because it does not adopt a trial by jury, which necessarily includes the form of English actions, in a case where it would be destructive to the peace and happiness of the country. If it would make them happy, undoubtedly let us give them English laws. If the English laws would be a prejudice to them, it would be absurd tyranny and barbarity to carry over all the laws

[1] See as to proceedings of the Quebec Grand Jury in 1764, Kingsford, *History of Canada*, vol. v., pp. 152-6.

Digitized by Google

of this country, by which they would lose the comfort of their property, and in some cases the possession of it. As far as that goes, I consider it merely as a gift of the conqueror to the conquered people, whom he does not mean to treat cruelly. The criminal law stands as in England. I have observed many things exceedingly strong which have, in my poor opinion, prejudiced the Canadians against the bill; but as to the criminal law, it is certainly liable to none of the objections now urged.

The next article is with regard to religion. To take away religion is what nobody wishes. What is to be substituted in the place of it? Why, a general toleration, says my learned friend, without any kind of establishment; or if an establishment, that of the church of England; or that the church of England should at least go *pari passu* with the church of Rome. Taking it in either of those views, I fairly own, I differ very much in opinion with regard to the law of this country. By the first of Elizabeth, I take it that there is no reason whatever, why the Roman Catholic religion should not have been exercised in this country as well as in that: confining it entirely to that act, I know no reason to the contrary. The 37th article of our religion speaks in such language, that the poorest Roman Catholic, who had any sense, might use it just as much as the warmest Protestant; for the language by the act, and article, is only this, that no foreigner whatever should have any jurisdiction, power, or authority within the realm: but there is nothing in the act to prevent a man believing the infallibility of Popery, if he thinks proper to believe it. It may refer to any church in the known world. I take the act of Parliament to be purely declaratory of that which is the law—of that which must be the law, in every sovereign state under heaven. Then as to the right of the clergy to their dues; the right of the bishop to his dues—these rights do not extend to his ecclesiastical functions; they extend only to that maintenance which he was possessed of before, and which was small enough before. In lieu of tithe, there was a thirteenth[1] paid to the clergy. The bishop has always lived in a seminary: the see was not sufficient, in point of effects,

[1] In 1663 Bishop Laval ordered an annual tithe of one-thirteenth of the cereals to be collected, and the Council gave this order the force of law. Owing to a general outcry, however, the amount was reduced by Laval to one-twentysixth, which is still the established amount.

Digitized by Google

to maintain him : but observe in what manner his rights are reserved. They are reserved to be exercised only with relation to such as choose to be Catholics. Nobody is compelled to be a Catholic : they are rather invited not to be Catholics, by having an exemption held out to them. If that be the sufficient performance of the stipulation in the treaty of peace, and if the country is ready to accept of it *eo nomine*, gentlemen should make no objection to it. It is the very least that could have been given either to humanity or justice ; considering them as having stipulated for that religion at the time. If I had had to prescribe what was to be given them, I should, instead of stripping the Roman Catholics of their religion, which was the religion of all temporal and all judicial authority, have thought myself bound in conscience and humanity to have allowed the religion, with one degree more of establishment, if it must be called establishment ; I mean with one degree more of maintenance than it had before.

The next objection is that which relates to the governor and council. I could wish that those gentlemen who object to the legislature would be pleased to substitute something in the place of it. I have never yet heard the most sanguine of those who desire to assimilate the government of Canada to the constitution of Great Britain say, it is fit to give the Canadians a governor, council, and assembly ; but if it is not fit, what kind of government would you reserve for them, preferable to the one chalked out by the bill before us ? Do not let us amuse ourselves with aggravating the possible consequences which may befall the wisest constitution in the world. But how is it to be carried into execution ? Why, by drawing as many of the Canadians as it is possible to do with safety to the sovereignty of Canada, into that assembly ; by making it a somewhat better thing than the form of their present constitution. At present, it consists of a governor and council, with authority to make laws, which do not affect the life or limbs of any person ; in which every law that has been thought necessary has been brought under a doubt, by the form in which the authority is conveyed ; for if they are enabled to make only such laws as do not affect the life or limbs of any person, what law does not come within one of those bounds ? It is meant to give them a more active constitution. It is confessed, on all hands, that this is essentially necessary, and that it is

Digitized by Google

impracticable to put it in the form which other gentlemen seem to wish.

With regard to the question asked by the honourable gentleman, whether this is to be a permanent constitution ?—whether it is wished there should be so rough a form of government established in any English province whatever ?—I can only say, that unless the present government be not only objected to, but the objection so stated as to point out some period of time in which it is fancied to be right to create the assembly which is now confessed to be wrong, I do not see how it would be possible, with the fullest purpose of doing it, to assimilate that constitution, in point of form, to this. But it is to be assimilated by a new clause, to be added to the present bill ! If you were to give them a very short duration of time, everybody knows that the same argument against assemblies would go to the short time to be prefixed. If the idea were to make the law last from period to period, from three years to three years, is that the method of treating the country ?—giving them no hopes of permanence ? But if you do not fix the time, they will not look upon this to be the constitution, nor be anxious to assimilate with it ! When gentlemen apply the word " assimilation " to religion, to law, to civil laws, and to manners, I can easily conceive it is not an undesirable object in policy, that they should be so far assimilated. To a certain degree, I can conceive that the government of the country, under the present constitution, will look upon it to be their duty to assimilate the people in language, manners, and every other respect in which they can be expected to hold a more intimate connection. But when that assimilation is proposed to be carried into the law-form of the constitution, I cannot conceive the form of the British constitution, as it stands at present, proper for them. Upon this main principle, you ought to make a repartition of the sovereignty of the country between the King and the people, of whom 558 are to be elected a parliament. On this principle, the sovereignty of this country was intended to reside, and does, in fact, reside there. But do you mean to vest the sovereignty of the province, either by repartition or otherwise, in any other place than in the House of Lords and Commons of Great Britain ? Yet, if you follow your assimilating idea, you must do that. I only know that none of the charters intended it. It is

Digitized by Google

impossible for the King to have done it—to have created the sovereign authority of governor, council, and assembly, in any one of the provinces. In point of fact, they have considered themselves, in more views than I wish to draw into debate, masters of the sovereign power. Is their money to be applied to support the British empire? Are their forces to be applied to the support of the British empire? Are they content that the King, Lords, and Commons of Great Britain shall be the judges of the drawing forth of those forces, and the applying of that money to the protection of the British empire? I think I drew a degree of attention and conviction, when I stated it as an absurdity, that the sovereignty of the province should be divided between the governor, council, and assembly; and to be sure it is a grossness,—it is making two allied kingdoms totally out of our power, to act as a federal union if they please, and if they do not please, to act as an independent country—a federal condition pretty near the condition of the states of Germany. If you do not like that idea, in all the extent, in all the grossness of it, would you create a constitution in such a case which would make it, in fact, the very thing you deny in words?

The next thing that has been said is, that Englishmen carry over their constitution along with them; and in that respect it is a hard measure to take from them any of the English laws they carry over with them. I no more understand this proposition, especially as applied to the present subject, than I do the former. When the Crown of Great Britain makes a conquest of any foreign established country, if it be true that it is an article of humanity and justice to leave the country in possession of their laws, then, I say, if any English resort to the country, they do not carry the several ideas of laws that are to prevail the moment they go there: it would be just as wise to say, if an Englishman goes to Guernsey, the laws of the city of London were carried over with him. To take the laws as they stand has been allowed; to act according to those laws, and to be bound by their coercion, is a natural consequence. In this view, I think the bill has done nothing obnoxious. I have no speculative opinions. I would have consulted the French habit to a much greater extent, if it had been for me to have framed the law.

Colonel *Barré*.—Sir, the honourable and learned gentleman who spoke last has thought proper to give a short,

Digitized by Google

but very imperfect, and for aught I know, a very incorrect, history of this proclamation. He says it was left in an office ; it was left a sketch, and that sketch was unfinished ; it was left by one noble lord, and taken up by another, who thought proper to make considerable additions to it. The honourable and learned gentleman seems to be very much displeased with this proclamation. He has reasoned against it in different parts, and stated divers inconveniences in it. I cannot help observing, that the honourable and learned gentleman seems to be more solicitous upon this occasion than the conquered inhabitants of that country, and, in some measure, more than those who have been the conquerors of it. This proclamation, Sir, gave a certain form to the colony. It provided, that the inhabitants should have an assembly, as well as all the other royal governments, as soon as possible. The proclamation held out this language, that "until such assemblies could be called, all persons inhabiting in, or resorting to, the said colonies, might confide in the royal protection for the enjoyment of the benefit of the laws of England.' Under this proclamation, thus held out as a solemn act to the people of that country, many Englishmen went, and settled in the heart of Canada : but their rights, their privileges, were not thought worthy of the honourable and learned gentleman's consideration ; he stood up only in defence of the Canadians : but there is a very considerable number of men, no matter of what description—they may have been poor bankrupts, but they are English subjects, who have settled there under the faith of this proclamation. The honourable and learned gentleman was not precise in stating the limits of our colonies. He seemed unwilling for the House to think that any one of the colonies, especially Pennsylvania and Virginia, had a right to settle beyond the Endless Mountains ; as if the honourable and learned gentleman could be ignorant of the fact, that many thousands of English subjects are established some hundred miles beyond the Endless Mountains, upon the very spot which you are now going to make a part of this country of Canada.

Sir, with respect to the Canadians themselves, the learned gentleman asks—what would you do with them ? would you do the cruellest thing that ever was done to any conquered nation upon earth ? would you take away their laws, their customs ? Now, Sir, I never yet knew it was

Digitized by Google

found a grievance to any nation, to give them the English laws, the English constitution. So far from it, the Canadians admired and revered those laws, as far as they could be made acquainted with them. If it is doubled, I have an evidence to produce—the honourable and learned gentleman himself. He says, "what did they do when their grand jury met? they called for their accounts, the public accounts. They likewise wished to put in execution the Popery laws." Could there be any stronger proof in the world, that they knew the value of those laws? The criminal laws you have thought proper to give them; but you have not given them all. To my certain knowledge, they wish to have the Habeas Corpus. You have retained the civil law. What you will afterwards do to get the law administered, is to me incomprehensible. The civil law of the country stands founded upon what is called the custom of Paris. Thirty folio volumes of that custom those learned gentlemen are to make themselves masters of, and lay open to you, instead of making the English law the basis of their constitution. If any customs, or any particular laws, are applicable to the people of that country, take those customs and laws, and graft them upon the law you give them. Mr. Masères has stated his opinion to you. It is in the hands of the public: but you have not followed his advice. My honourable friend wishes an establishment of a different kind: others think the establishing such a government as this is right. One law of inheritance the Canadians complain of: the court of France has complained of it, and once attempted to correct it. It is that which the learned gentleman knows to be a custom with them; namely, the quantum taken for the crown upon the alienation of any estate;[1] they wish to get rid of that. In short, if you had led them with any address, by degrees they would have received great part of the English law: they would have hugged it to their bosoms; they would, from time to time, have abolished stated customs, and, by this time, you would have assimilated them to your constitution, and not left them standing single, as Catholics, under an arbitrary power.

Another thing I wish to notice. Has there been any

[1] A fine of a quint, or one-fifth, of the value of the seigniory dealt with became due upon change of ownership by sale, gift, or inheritance other than direct succession. By custom a rebate was allowed of one-third of the amount due.

Digitized by Google

application from the country? any complaint of all this chaos which the honourable gentleman has complained of? No: there is no complaint. The principal people of the country are of a very particular cast; they take a liking—this I know to be the fact—they take a liking to assemblies; they think they have as good a right to have assemblies as any other colony on the continent. It is strange, if they like this constitution, that you will not give them all the benefit and advantage of it. They ask for it; and when I say they ask for it, I do not mean to say that they have made any application in form to the court here, but they have stated their wishes to the governor there. Why not let them have assemblies? But it is said, they are not ripe for assemblies! Government has, to be sure, made use of the same argument to induce them to drop that idea. It was said, "Don't you see very plainly, that the colonies upon the continent have all of them assemblies? Don't you see they are quarrelling with their King? If you have an assembly, you will probably be in the same situation." Now, a quarrel with their King, to the Canadians, is reckoned worse than any vengeance that can be poured upon them. They will not hear of anything that will put them upon bad terms with their King. The method that I should have thought most natural, is the method recommended by Mr. Masères, which was, by degrees, to introduce what is proper in your laws, and to let what is proper in the French laws remain with them.[1]

Mr. *Charles Fox*.—With regard to the measure itself, I will say, that it is not right for this country to originate and establish a constitution, in which there is not a spark or semblance of liberty. A learned gentleman has said, that by this means we shall deter our own countrymen from settling there. Now, Sir, as it is my notion, that it is the policy of this country to induce Englishmen to mix as much as possible with the Canadians, I certainly must

[1] Several speeches are here omitted, including that of Wedderburn, the Solicitor-General, who admitted that, "If I had been compelled to have proposed my views upon the subject, perhaps they would not have been the views of the present bill." His report, together with that of Thurlow, is given in Christie's *History of Lower Canada* (Quebec, 1848), vol. i., pp. 27–45. In it he said: "More attention is due to the native Canadian than to the British emigrant, not only because that class is the more numerous, but because it is not the interest of Britain that many of her natives should settle there."

Digitized by Google

come to a different conclusion. Everything that forwards the learned gentleman's end, defeats my view of the subject. The learned gentleman has, too, with great ingenuity, stated the inconvenience in Canada, if we give them our laws with respect to real property. I do not suppose there is any gentleman who would approve of those laws being forced upon them; but the learned gentleman spoke, as if all civil law were comprehended in this kind of relation, which affects the descent of property, the Habeas Corpus, and all other rights. He quoted Montesquieu with approbation, about exposing children, but he says, "I cannot give the Canadians trial by jury; I cannot give them the Habeas Corpus"; which are laws of the same nature, and fully as commendable as those which prevented the exposing of children. I cannot conceive why we should not give them the law of this country. If we gave them that law, it would be easy to alter it in many respects, so as to make it agreeable to them. That, Sir, I conceive it to be the duty of this country to do; and it is very easy to do it: but to go at once, and establish a perfectly despotic government, contrary to the genius and spirit of the British constitution, carries with it the appearance of a love of despotism, and a settled design to enslave the people of America, very unbecoming this country. My idea is, that America is not to be governed by force, but by affection and interest. But the Roman Catholic religion, the learned gentleman says, is not established. According to my notion, the establishment of that religion consists in government paying its teachers; and when the professors of that religion receive tithes, that, I maintain, is establishing a tax. I profess I do not myself object so much to that portion of the bill; because I think the persecution of the Roman Catholics is much to be deprecated, and that the penal laws of this country are repugnant to every principle of toleration. I think there might be, in some part of his Majesty's dominions, an asylum, where Roman Catholics might go, if persecuted.

Fox had argued that, as this Bill legalized tithe, it was therefore a money Bill, and should not have been introduced into the House of Lords.

Digitized by Google

After a long discussion on this point the second reading was passed by 105 to 29.

On May 31 the Opposition moved : " That there be laid before the House copies of the reports made by Major-General Carleton, Governor of the Province of Quebec ; by William Hey, Esq., Chief Justice ; and by Francis Masères, Esq., late Attorney-General of the said province, relative to the state of that province."

This was opposed by Lord North, on the ground of the delay which would be caused by the copying of the reports, and " because I am confident every information may be had in a more authentic manner from the parties themselves *viva voce*."

Mr. *Edmund Burke*.—The learned gentleman observes, that it is a tyranny to place over a whole people a law they do not understand. But, Sir, is it not less a tyranny to place a law over them which they do not understand, than to impose upon them a law which we do not understand ourselves ? Does this House know what that law and custom is which they are going to impose upon their fellow subjects ? I do not condemn either the present law, or that which is proposed in its place. I will not approve the one or the other ; much less attempt to impose it either upon Frenchmen or Englishmen, until I know more of the nature of those laws than I do at present. The customary law of Canada may be a defect grown up from the time of barbarism, and corrected by despotism ; as in many parts of France, in many parts of Germany, and in many other parts of the world. Can we say, what is the customary law of Paris, which is going to be made law by this bill—which is going to be made law in Canada ? Do we know how to modify it by the practice and admission of the civil law, which has been admitted into almost all the provinces of France ? For observe, that it is not the custom of Paris, which has been mitigated by ordinances and mitigated by the civil law, which is proposed to be established ; but the custom of Paris, unmitigated, unqualified, is now proposed to be established for ever, as the law of the province of Canada. I should be glad to

Digitized by Google

read the clause, to see if I am right in that expression; for I could wish to be correct. In page 3, it says, that "all his Majesty's Canadian subjects shall hold and enjoy their property and possessions, &c.; and that in all matters of controversy relative to property and civil rights, resort shall be had to the laws of Canada." I see I was rather mistaken, and am willing to correct myself. It is not the custom of Paris that is to be established in that extent, but the custom of Canada, of which we know little or nothing. But there is something worse in the wording of this clause; for it is to be established, it is said, "in as large, ample, and beneficial manner, as if the said proclamation, commissions, ordinances, and other acts and instruments had not been made." The wording of this clause supposes, that the acts and ordinances, and law of England, had not been beneficial to the Canadians; that the law of Canada is by the English government approved; and the law of England stands condemned, as not being beneficial. Now, I should be glad to ascertain two facts: first, whether the British government is odious to the Canadians; and next, what are the excellences of that government to which we are reverting; what beneficial effects it has produced; and whether the people of Canada have flourished more under the French government, than under the English government? These are matters of fact necessary to be known, to enable us to judge of these laws. I shall never be induced to consider government in the abstract. The government under which the people have flourished most, that is the best government. I should desire to see the present state of the country compared with its state for the twelve or fourteen years preceding the troubles that gave rise to the present measure. Perhaps the people have enjoyed great benefits. If they have, I would inquire, whether this proposed change must not produce great inconveniences? Until I have this light of facts, it will be impossible for me to give an honest vote, with a view to a change of the government of Canada. If you introduce laws that have lain dormant for twelve or fourteen years, it is as much an innovation, as if you had made the constitution new. I have no objection to make the constitution new, provided the necessity of so doing is set in a clear and satisfactory manner before me. I think Parliament can proceed upon no principles but two—reason and

Digitized by Google

authority. Reason we have none. The next question is, what is our authority? I believe the opinions of the learned gentlemen near me, will, must, and ought to have their due degree of weight with the House. They seldom give their authorities, without, at the same time, giving their reasons. It may be said, we have the gentlemen here, and therefore have no need for their written opinions. I should very readily agree to this, if gentlemen will tell me that these written opinions may not have been given with a greater or less degree of latitude in the council—if gentlemen will tell me that I cannot, for the sake of the public good, have those facts brought before us, which those learned gentlemen made use of to justify their own opinions. The reasons of those great law authorities, combined with the authority of those facts, must have great weight with me.

I have hitherto avoided offering a single word upon the general policy of this bill. It is said, the general provisions of the bill are to be considered in the committee, and the general argument on bringing up the report. I guard myself from this admission, upon this single question—ought not such a ground of information to be first given, as will induce you to reject the law of England, and assume the law of Canada?—that is, to reject the law which you do know, and the beneficial effects of which you have experienced, in order to impose another law upon the Canadians which you do not know, but the ill effects of which you have felt? Are you to proceed, in a manner so wild and at random, in condemning the British laws unheard, and establishing the French law in Canada? I may venture to say, "condemning" the law of England, because its condemnation is virtually made, the moment it is proved not to be beneficial to the people. I believe I am not so attached to words, as to put my own opinion in competition with that proof; but as yet I have no evidence that the people do not like our law. I do not know this to be the case. The presumption is, that the law under which they have long lived, is the law most agreeable to them. I will go upon presumption, when I have no other ground to judge upon. The law may have been more agreeable to them from their ignorance. They did not know of any better; and the moment they know some other system more beneficial, they may wish to adopt it. Until I know that the people of Canada con-

Digitized by Google

demn the British law, I will not impose another, which their own enlightened judgment would have rejected. Has any petition appeared before the House, to tell us the law was a burthen to them? Is either the form of trial, or the laws by which they are tried, disagreeable? What evidence have we of all this? As a friend to the people of Canada, I ask these questions. The conquest of them should not make them less dear to me: I would even treat them with a milder hand. The treaty, too, has demanded it: but until I know that the English laws are not beneficial—are not good for all men in all cases; until I know this,—until the people of Canada complain of them—I will not presume that they are opposed to them. At present, there is an English complaint against the establishing of French laws. I should be glad to hear a French complaint against the establishing of English laws; and whenever that comes, I shall be ready to give it a fair hearing. But at present, the bill stands upon no complaint.[1] There can be no mischief in postponing it; but there may be much mischief if you give the people French despotic government, and Canadian law, by act of Parliament. By a delay of a year, they would be kept out of the advantage of having Canadian law universally established, which Canadian law universally establishes a despotism; and there is nothing left to complain of but the despotism established by necessity. At present, they bear that grievance; but a grievance by necessity, and a grievance established by law, are two very different things. Supposing the bill to be delayed for a whole year, the extent of the evil on our side will be, that we shall have more information; and as for the Canadians, they will remain a little longer in the same situation in which they are at present. If you were prepared to give them a free constitution, I should be in haste to go on; but necessity—"necessity, the tyrant's plea"—is urged for proceeding immediately.

Let us have evidence, then, of that necessity. I stand for the necessity of information; without which—without great, cogent, luminous information—I, for one, will never give my vote for establishing the French law in that country. I should be sorry to see his Majesty a despotic governor. And am I sure that this despotism is not

[1] A petition from French Canadians complaining of the inconvenience of English law was, in fact, presented in February, 1774.

Digitized by Google

meant to lead to universal despotism? When that country cannot be governed as a free country, I question whether this can. No free country can keep another country in slavery. The price they pay for it will be their own servitude. The constitution proposed is one which men never will, and never ought, to bear. When we are sowing the seeds of despotism in Canada, let us bear in mind, that it is a growth which may afterwards extend to other countries.[1] By being made perpetual, it is evident that this constitution is meant to be both an instrument of tyranny to the Canadians, and an example to others of what they have to expect; at some time or other it will come home to England. When it is proved that the laws of England could not govern Canada, it will be plain that some stronger power than the laws of England is necessary to govern this country. I shall give my first vote upon this bill, against the despotic government there; whether it is to be established for any length of time, or to be established at all by Parliament. When you cannot make a free government, you ought to leave a country to be governed by the force of necessity. Government, and a free government, are two different things; but with regard to those laws which are in use at present, I cannot form an opinion—I know nothing of the custom of Canada.

The motion of the Opposition was defeated by 85 to 45.

On June 2 the examination of Governor Carleton began, and was concluded on the following day.

Mr. *Mackworth*.—Were any objections made to that mode of trial?[2]—There are two sets of people in Canada: one, those who call themselves the ancient subjects, the other the new subjects. The first are very well satisfied with the form of justice administered in the Court of King's Bench; the other, the newly acquired subjects, are extremely satisfied with the integrity of the court, but extremely dissatisfied with the mode of trial. Their dissatisfaction arises, first from the great expense that the

[1] This is an echo of Pitt's speech of 1766 on the Stamp Act: "I rejoice that America has resisted. If its millions of inhabitants had submitted, taxes would soon have been laid on Ireland; and if ever this nation should have a tyrant for its king, six millions of free men, so dead to all the feelings of liberty as voluntarily to submit to be slaves, would be fit instruments to make slaves of the rest."

[2] *I.e.*, that employed from 1763 to 1774.

Digitized by Google

court draws them into ; and in the next place, from all the proceedings being in a language they do not understand : they are likewise not satisfied with juries. They are extremely flattered and pleased that there are to be juries ; that they are to be admitted to be of the number ; but they think it very strange that the English residing in Canada should prefer to have matters of law decided by tailors and shoemakers, mixed up with respectable gentlemen in trade and commerce ; that they should prefer their decision to that of the judge.

Have they been dissatisfied with the judgments that have passed in the Court of King's Bench ?—I cannot say I ever heard a complaint of the kind.

If juries were composed of the species of men such as they approved of, would they disapprove of the mode of trial by jury ?—The great object with the Canadians would be to procure justice ; and to procure it at a reasonable and moderate expense ; these are the essential points. As to the mode of trial, whether by jury or by the judge, they would prefer the latter from custom, habit, and education. I am not authorized to speak for the Canadians, to assert that they absolutely pray against juries. They certainly are attached to their own customs and manners. I am willing to give as much information as is in my power, but the chief justice is much better qualified than I am.

If the expense was moderate and the jury composed of proper men, would they object to that mode of trial on account of thinking they should not have justice done them in the trial ?—I cannot say that the Canadians would wish to adopt it : on the contrary, I have heard them make objections to it. How far those objections will carry weight, I know not.

Is not the trial by jury in the Court of Common Pleas optional ?—I understand so.

Do you know that the Canadians of late, in the trials in that court, have chosen the trial by jury to decide their causes ?—In general, I understand not.

Can you give any authentic account of the number of Protestant subjects now in the province of Quebec ?—I had the return of the province last April of the number of Protestants in the year 1770. By that return, I believe, everybody who calls himself a Protestant is included. By that account they are under four hundred men, about

Digitized by Google

three hundred and sixty, besides women and children, in the whole colony of Canada. I am afraid their numbers are diminished since.

Do you think the diminution of the number of British subjects is an advantage or disadvantage to the province? —That is a political question. I am afraid their circumstances have been so reduced, as to compel them to quit the province; I speak from humanity. I do not mean to give any political opinion upon the subject.

In general, are these three hundred and sixty persons composed of men of substance and property in the province?—There are some who have purchased lands—officers, or reduced officers; some very respectable merchants; there are other inferior officers in trade, and a good many disbanded soldiers. In general, they are composed of people of small property.

What do you think may be the number of the new subjects of Canada?—About one hundred and fifty thousand souls; all Roman Catholics.

In the conversation you have had with the Canadians in general, are they not very earnest for the restitution of the ancient Canadian laws?—They were very much so when I was in the province; and by the accounts I have received since I came to England, they still continue very earnest indeed, and anxious about it.

Have they expressed lately any apprehension, on seeing plans of government sent over, that those plans should take place, or any satisfaction or desire that they should? —They have expressed great uneasiness at the apprehension, and more warmth than is usual for that people. They seem determined to form associations and compacts to resist the English law, if they should be compelled to do it, as far as they could do so with decency, and their duty to the government would permit.

Have the clergy in Canada since the peace enjoyed and received the tithes and parochial dues?—They have received the tithes and parochial dues as formerly; there may be some who have not, but very few; as few as those gentlemen who receive their rents; they are as well paid as the rents.

Mr. *Charles Fox*.—Did they receive the tithes and dues only from the Roman Catholics, or from the Protestants likewise?—I really do not know; there are so few Protestants that cultivate the land.

Digitized by Google

Was there an idea that the Protestant landlords were exempt from paying tithe ?—I have heard some of the clergy say, that in the uncertain state of things, they would not ask the Protestants to pay unless they chose it : as there were opinions spread among them, that it was not agreeable to the English law to try the right, they would have to encounter the great expense of the law. I think it induced them to act with great moderation and discretion in the matter ; hoping in a short time, that the laws would be ascertained, that they might know what ought to be paid and what not.

Did those few British subjects inhabit the towns of Quebec and Montreal ?—Chiefly ; there are very few in the country, so few, that they are scarcely to be seen in travelling through it, as there are but three hundred and sixty in a district of three hundred miles long, and very wide.

Lord *North*.—Is not the cultivation of the lands entirely in the hands of the Canadians ?—Almost entirely.

What part of the trade is in the hands of the Canadians ? —I have heard about two-thirds.

Is not the trade much increased ?—I understand the trade is increased very much.

Do you attribute that increase to the trial by jury, or introducing so much of the English law as has been introduced ?—No ; they have no dependence upon that at all.

Can you assign any probable reason to what it is to be attributed ?—The colony of Quebec was in its state of infancy ; it is so still, in some measure. They have been now fourteen years quiet. The country has peopled very fast ; besides the natural increase of population, there have been a great many Acadians, who had come into the province ; people taken from America and Nova Scotia, that were scattered in the province during the course of the war. As the people multiply, they act as a sort of farmers ; they take possession of the lands behind their own, so that they go on cultivating the country very fast.

Do you not think the old inhabitant in Canada is receiving considerable advantage from the change of the disposition of the inhabitants, from a military to a commercial life ?—No doubt he is. Under the French government, the spirit of the government was military, and conquest was the chief object ; very large detachments were sent up every year to the Ohio, and other interior parts

Digitized by Google

of the continent of North America. This drew them from their land, prevented their marriages, and great numbers of them perished in those different services they were sent upon. Since the conquest, they have enjoyed peace and tranquillity; they have had more time and leisure to cultivate their land, and have had more time to extend their settlements backwards; the natural consequence of which is, that wheat is grown in great abundance. I have been very well informed, that we have exported large quantities of wheat.

Colonel *Barré*.—I submit whether it would not be better to go through one particular part first, without going into any other.

Lord *North*.—It is almost impossible. No man can know how many questions every particular member has to ask upon this point.

Colonel *Barré*.—I have only one question to ask upon that point, reserving myself to ask others; it follows from the noble lord's question. If by any means that same warlike spirit was introduced again, would it not introduce the like disagreeable and bad consequences?—I take it, that a spirit of war in that, and in all countries, is very much against population and the cultivation of land.

What measures in that country would put an end to this spirit?—Their being subdued by the people they meant to conquer.

Lord *North*.—Has not the increase of the agriculture been the principal cause of the increase of the commerce?—It is so understood.

Do you not understand, that the great capitals of our merchants, their great knowledge, and their spirit in trade, have likewise contributed to the increase of it?—I believe they may have been of advantage.

Are the Canadian inhabitants desirous of having assemblies in the province?—Certainly not.

Have they not thought with horror of an assembly in the country, if it should be composed of the old British inhabitants now resident there?—No doubt it would give them great offence.

Would they not greatly prefer a government by the governor and legislative council to such an assembly?—No doubt they would.

Do you not think a free exportation of corn contributed to the encouragement of population and agriculture, as

Digitized by Google

much as any of the foregoing causes ?—The population was the first effect ; the cultivation of the land was the consequence.

Was it necessary to have any land to be qualified to serve on a jury in the country ?—I believe there is very little nicety in that matter ; there is too great a scarcity of Protestants. I beg leave to add, in the list of jurors I mentioned, there were a great number of disbanded soldiers that kept tippling houses.

Is that the only idea of the assembly, that you ever knew suggested to the Canadians, and to which they returned their answer ?—I put the question to several of the Canadians. They told me assemblies had drawn upon the other colonies so much distress, had occasioned such riots and confusion, that they wished never to have one of any kind whatever.

Did not the Canadians likewise think, that assemblies would draw upon them expenses as well as distress ?—By distress I meant the displeasure of this country. No, they never stated that.

Have you never heard, that they imagined they should be obliged to pay the expense of government as soon as they had assemblies, but that until they had them they were not to pay the expense ?—No, that was not the idea of the Canadians ; they dislike it as not being conformable to their ancient customs.

Do you mean indiscriminately the whole law, civil and criminal ?—The civil law.

Do you think, if all their customs of descent and heritage were preserved, that they would be dissatisfied with the introduction of trial by jury ?—With regard to any portion of their law, one custom separate from another, I believe they would be extremely hurt to have any part of their customs taken from them, except where the commercial interest of the country may require a reasonable preference, and such commercial laws as can be especially mentioned to them. I believe they would make no objection to any such commercial laws, if they may know what those laws are. But laws in the bulk, which nobody can explain to them, they think would be delivering them over a prey to everybody that goes there as an attorney or lawyer.

Was the dissatisfaction expressed by the Canadians at large, or by the corps of noblesse ?—They were pretty

Digitized by Google

unanimous in most points; as unanimous as so large a body could be expected to be.

Are the noblesse better pleased with a jury in criminal causes?—I never heard objections made to the criminal law, except in one instance. Very soon after I went into the province, there were some Canadian gentlemen and some English gentlemen arrested for a very great crime indeed.[1] They were accused of a very great crime indeed. They were committed to gaol until the next trial. It was the unanimous sense of the province that they were innocent, and they were found innocent at their trial. Upon that occasion, I heard several of the Canadian noblesse complain of the English law; but, upon my word, I recollect no complaint of the criminal law but upon that occasion.

What was the nature of the complaint?—They complained that, upon the deposition of one man of very bad fame, gentlemen should be committed to prison, and there remain a considerable time before they could come upon their trial. They said, that under the former law, more than one information would have been taken, and an inquiry made by the King's attorney-general, and that those gentlemen would not have been arrested if such information had been taken, as their innocence by that means would have appeared.

Has there been any other trial by jury for a capital offence?—I do not remember to have heard of any.

Have there been any considerable number of trials for offences among the common people?—Very few, to my knowledge.

What number of these noblesse is there in this country?—My memory will not suffer me to tell.

Nearly?—I suppose a hundred and fifty; I speak at random.

What is the occupation of them; do any of them trade?—I believe very few; they are not fond of trade. They have been brought up in the troops; they do not apparently trade: perhaps they may have connections with some that do.

Do you know from the Canadians themselves, what sort of administration of justice prevailed under the

[1] They were accused of attacking a magistrate named Walker, and cropping one of his ears (see Kingsford, *History of Canada*, vol. v., pp. 163-169.

Digitized by Google

French government, whether pure or corrupt ?—Very pure in general ; I never heard complaints of the administration of justice under the French government.

Was it so pure, that there was no room for favour from the judge ?—The intendant of the province was chief in matters of justice.

What was his general character ?—With regard to his character as chief justice, I believe it was unexceptionable. It can never be the interest of a sensible man to connive at, or suffer, iniquity in courts of justice. The matters in dispute are very small between neighbour and neighbour, and he would only incense the people for very little purpose. The French intendant had other methods of making large sums of money, and enriching his favourites, if he had a mind to do it.

Was the administration of justice, in the other branch, equally pure ?—He was at the head of all justice. He had his delegates, who presided in small matters in the other parts of the province. There was an appeal from the others to the intendant.

Were the decisions of the court in the three districts always just ?—I believe so ; I never heard any complaints from the people, that the courts of justice were not properly administered. I have heard of great fortunes made in another manner.

If their favourite laws and favourite customs were preserved to them, would they not, in every other case, take the law of England ?—They do not know what the law of England is ; they call the law of England the mode of administering justice. They do not know the difference between Canadian law and English, in the mode of administering it. The essential laws of England, in deciding matters of property, they have not the least idea of. The intelligent part of the Canadians think and hope, that their laws and customs may be continued, because they know what they are.

Have the intelligent part of the Canadians any idea of the law of Habeas Corpus ?—I believe not the least. I do not say there are no gentlemen who have made it their particular study.

Are there any number of the professors of the law, capable of instructing them in the law there ?—There is a Mr. Taylor, attorney-general ; there is a Mr. ——, secretary. I would not venture to say there is one lawyer in

Digitized by Google

the whole province who has been at the bar in England ; I may be mistaken. I do not know one that ever was at the bar as a lawyer.[1]

Then I understand you do not imagine that any other person but those two are barristers ?—Not to my knowledge.

In general, have not the British subjects in Canada and the old subjects intercourse with one another ?—They have very little society.

Do the Canadians in general communicate their sentiments to the British subjects at all, or to the officers, &c. ?—They are very decent people, and communicate their sentiments only to those whom the King has appointed to receive them.

Has there been, by the supreme council established, any summary trial for small matters in the different parts of the province ?—Yes ; the justices of the peace formerly had authority to try small causes.

Were any of the Canadian gentlemen among those justices ?—Not one.

Did there exist in the French government any summary mode of proceeding in the country ?—Yes ; some of the seigneurs had a right to hold courts of justice. They almost all had a right ; but few exercised that right.

Has that been taken away under the English government, or more exercised ?—Entirely taken away ; besides that right, which the seigneur of the original tenure has, there was what is called the right of proceeding as delegates to different parts of the province.

Are those delegates resident inhabitants, who have a commission something like justices of the peace in England ?—They were creditable people of good understanding. There was scarcely such a thing as a lawyer admitted into the colony, under the French government, except the King's lawyers ; I mean regularly educated lawyers. There were attorneys and notaries.

Do you conceive the people of the country to be at all informed of the French law they lived under ?—They understand the French law from education, as the people of England understand the English law from education, from the customs and usages of the place.

Do they understand more than the general custom of descent and heritage, and the mode of conveying pro-

[1] This occasioned a great laugh [Cavendish].

Digitized by Google

perty in that country ?—They understand in all respects whatever comes before them. All the French law was not introduced into Canada. They are acquainted with the laws of property generally, and the custom of Canada ; but as to the other laws of Paris, they are not introduced : they are as much unknown to them as the law of England.

Is there any code of Canadian law published ?—There are law books, and some that contain precisely the laws and customs of Paris, from whence the Canadian laws are derived. There are, besides these, a collection of the customs of Canada, as far as they are able to procure them, which I understand is published.

Has there been any plan proposed since you have been governor, or any in your predecessor's time, to determine causes of small value ?—I do not know that there is any plan. They have no sort of intermeddling with the administration of justice, but in juries.

Would not that have removed their objection to the English government, and given general satisfaction in the country ?—The administration of justice by the seigneurs was rather a tax upon them ; there were very few that exercised it. Since I have been there, they have applied to me to know whether they might not exercise it ; or to know, whether it was taken from them. I said, I wished they would let the matter lie dormant till something was finally determined.

What is the wish of the people who would be subject to this jurisdiction ? Do they wish to be tried without expense, and upon the spot ?—They were under some check under the French government. They certainly were not delivered up to their mercy : there was an immediate appeal to the King's courts of justice. They were under the check of the King's courts of justice, and the King's attorney-general brought everything up immediately.

Might not some alterations have made that very agreeable, such as might have enabled them to bring small suits to immediate issue ?—They are very much attached to their ancient customs. They were so much dissatisfied with the people to whom commissions of the peace were granted in different parts of the province, that I was obliged to take away their power. It never was much trusted into the hands of the French.

Digitized by Google

Were all the judges in all the courts of justice in Canada bred to the law ?—No.

Were any more than the chief justice of the King's Bench ?—I believe not one.

Were the Canadians made aware by those persons, that a jury in civil actions have nothing to do with the law ?—They have a very confused idea of the English law.

What was the nature of those decent compacts and associations they were determined to enter into, to resist the laws of this country ?—To bind themselves in all marriage contracts, as strictly as it was in their power to do, that all their possessions should go according to the Canadian customs, and in general to adhere to that as closely and firmly as possible.

Did the supreme legislative council ever make any laws to secure property, according to the Canadian customs ?—There were some ordinances made ; but I never could learn that anything was clear or certain in the law, nor did I understand clearly what was the law and custom ; nor does it seem to be a clear question in the country. I have heard the same man argue for the English law in one cause, because it suited his cause, and I have heard him argue for the French law in another cause. There is an ordinance for quieting the minds of the Canadian subjects, directing the court of common pleas to decide agreeably to the laws and customs of Canada, in adhering as much as possible to the laws of England. There is also an appeal to the supreme court of equity, which is directed by the common laws of England.

Would two-thirds be satisfied to have their suits, relative to debts in the country, decided by the Canadian law ?—I believe not.

Have they any regular method of conveying their sense at present ?—I understand they have conveyed it in petitions. When I was in the province, seeing great heats and animosities upon every occasion in various sorts of people, and that petitions of all kinds greatly incited these animosities, I dissuaded them, as much as it was in my power, from measures of that sort. Before my arrival they had expressed their desire in a petition to the King.[1] They frequently repeated the substance of that petition, as their earnest desire and wish, and would have drawn up a fresh one, had I not dissuaded them from so doing.

[1] See Kingsford, *op. cit.*, v. 156.

Digitized by Google

My reason was, that I wished them to wait till the King should think proper to reply to their petition. During my residence, upon all occasions, all sorts of people expressed the same wish and desire as in the petition, which I understood to be the petition sent before my arrival. I understand that since I have been in England, they have expressed the same wish and desire by fresh petitions, for fear the former one should be forgot. I assured them that in due time proper attention would be paid to it and justice be done; and that in the meantime, they ought to rest satisfied with the good-will and intention of this country towards them. I saw a letter, or paper, asking two Canadian gentlemen, in case I had not been here, to act for them as their agent, to present this petition.

Are the Canadians aware that an assembly into which they were admitted would be a legal and decent method of making the sense of the inhabitants known, or have they been led to look upon all representations of assemblies as factions, &c. ?—I believe they have no idea of assemblies, but what they receive from the newspapers, and the accounts that come from the other provinces.

Have, or have not, any pains been taken to explain to such persons the excellence of such a constitution, and the advantages that would arise from it, or have they been left to conjecture ?—It is a difficult matter to instruct a whole people in lessons of politics, and I have never attempted it.

At the time the apprehensions of the Canadians were signified to the officers of government, had there been no conference among the principal people in Canada ? Had there been no conference with the governor, to hit upon the form of government most agreeable to the people ?—They had frequently expressed their desire and prayer to have their ancient usages restored to them; and stated that the form of government which came nearest to their ancient usages would be most agreeable to them.

Did they state what those usages and customs were to the persons to whom they applied ?—They were in general words, and are expressed in the petition. All conversations upon the subject were to the same effect.

Do you conceive it would be impracticable at this time, without giving general lessons of politics to all the people, to explain the advantages they would derive from the English government, without the abolition of all their

Digitized by Google

usages ?—They have very often told me, that during the military government, the English frequently expressed to them the happiness, and great advantages they would receive, by the introduction of the laws of the English government, and by the protection of the civil laws of the country ; that they were to become a happy people by the change. Several years after, when they had experienced what it was, and found that they were debarred of what they looked upon as the civil rights of subjects, and that they understood that, as Roman Catholics, they could not enjoy places of profit, or trust, or honour, they thought it was adding mockery and insult to severity ; and were astonished that people could hold such language to them.

Was it ever suggested to them, that the difficulty could be got over, and that the Roman Catholics might be admitted to some share in the government ?—I have often told them that I believed it would be the case in time.

Did you ever hear of any of the principal Canadians expressing a wish that, until there was an assembly established, the council established by the King should be so modified, as to bear as near a relation as possible to the moderate principles of the constitution of this country ? —I often heard them express a wish, that Canadians should be admitted into the council ; I never heard anything further.[1]

How long were you governor of Quebec, and resident ? Are you not governor now ?—I am governor now. I was in the province as governor, or lieutenant-governor, commanding in the province, about four years.

Did you not, during the time of your being governor, endeavour to learn the manners, temper, and genius of the people over whom you presided ?—No doubt.

From the knowledge and experience you have of those people, do you think they would choose to have the English law as a rule to govern them, both in matters of property and matters of crime ; or in either, and which of them ?—The Canadians are very anxious to have Canadian law to decide in matters of property. I believe they are pretty indifferent in regard to criminal law.

Is that your judgment, formed from your knowledge and experience of them ?—It is.

Do you not imagine that the aversion they have ex-

[1] Some unimportant matter is here omitted.

Digitized by Google

pressed to the English law is because they think it is likely to interrupt the course of descent and inheritance, and to load them with incapacities as Roman Catholics ? —The partiality and attachment which they have to the laws and customs they possess is well known ; and they apprehend that laws unknown to them may introduce something terrible to them ; they know not what.

Is there not a great difference between the criminal laws of the two conntries ? The criminal law they have experienced is, in fact, not so extremely different. The mode of prosecution, the mode of deciding by the law, is very different ; but the trial of great crimes, in nearly all civilized countries, is almost entirely the same.

Are there not more punishments in the law of England than in the law of Canada ?—I believe there are : I cannot pronounce.

Was their dislike to the English law uniform from the beginning ?—From the time they first experienced it, they very soon found a great difference in the expense, which was very grievous and oppressive to them ; not from any defect in the characters of the gentlemen : but the wealth of the country, compared to this, is extremely small. Fees of all sorts, though not unreasonable in this country, were considered extremely heavy in that.

Did they not complain, that the proceedings were held in a language they did not understand ; and that no Canadian advocates were permitted to plead in the courts ?—That was a great complaint indeed, till it was remedied.

When that was remedied, did they then express as great dislike as they did before ?—The expense continued pretty much the same ; the satisfaction was greater, having then lawyers that could plead in the language they knew. I believe there has been very little of that in the supreme court.

Have you seen an act passed in the other House relative to Canada ?—I have.

Do you think that bill gives the freest form of government to Canada it is susceptible of ?—I should think it the best form advisable to give in the present state of the colony.

Were the noblesse not very fond of military rank and distinction before the conquest ?—They were almost all military men, and of course fond of rank and distinction.

Digitized by Google

Do they enjoy such gratifications now ?—I do not know that any of the Canadians in Canada enjoy any gratifications from the court of France.

Do they enjoy any under the English government ?—None.

Would it not be flattering to them to enjoy some rank ?—Undoubtedly.[1]

Would it be more pleasing to have a share in the government ?—Undoubtedly.

If his Majesty did not choose to appoint any particular persons in the place to a share of government, would they not be glad of having other lawful and honourable means of providing for themselves ?—No doubt.

Do not the gentlemen of Canada form some opinion relative to the welfare and prosperity of their own country ? Is not that a matter of discussion among them ?—It has been a matter agitated very much ; but they seem to confine their ideas chiefly to the restoration of their laws and customs, and wish that all distinction should be taken away which separates them from the English subjects. By that I understand the admission into places and offices of trust and honour, equally with the English.

Would they be glad to be in such a situation as to make this idea of theirs prevalent ?—No doubt.

Have they such objections to the form of an assembly, as to wish to make their ideas prevalent in such assembly ?—They do not wish for assemblies ; but if assemblies must be, no doubt they would wish them to be a free representation of the people. If that should be the case, they would compose a great part of that assembly.

Would they have an objection to a seat in such an assembly, in which they might have an opportunity of delivering their opinions ?—They never had an assembly, or anything like an assembly, nor have they the least desire to have one ; but if there should be one they wish to have a share in it.

Have they any particular objection to arbitration ?—Very far from an objection to it. In a great measure they have come into it, wishing to keep clear of the courts of justice.

Could they, therefore, have any objection to have

[1] Carleton had long been urging the giving of British commissions to the seigniors.

Digitized by Google

causes decided by gentlemen of the country?—They would wish very much to have their causes decided by gentlemen bred up in the country; acquainted with their laws, usages, and language. They would give the preference to judges; but I do not know whether they would make any violent opposition to juries, if this country should think them advantageous. They confined their petition mostly to general points. I do not know how far they would make juries an essential point.

Examination of Francis Masères, Esq., late Attorney-General of Quebec.

Mr. Masères was then called in, and acquainted the committee, that he went to Canada in 1766, and resided there three years. He was then asked,

What were the sentiments of the Canadian inhabitants, upon the supposition that the laws of England would be of no more authority among them, by reason of the proclamation?—A great many were very uneasy upon the apprehension of a sudden change of the laws respecting family descent; such as dower, and the like.

What sentiments do they entertain of the form of judicature?—I heard great complaints against the administration of justice. I endeavoured to sift them to the bottom. I think the result was the expense principally; partly the delay according to the mode of English administration. The expense did not consist principally in the fees of attorneys, but the provost-marshal's fees, which were thought intolerable. At the same time, I doubt much whether the provost-marshal did exact unreasonable fees; because, the two that acted there have assured me, they did not make fifty pounds a-year of their place. Whether they said true, I cannot tell. I have heard of the extravagance of the fees, and also of the great burthens of attorneys and advocates; but those fees are not now greater, but rather less.

Do you think the people have a strong attachment to our laws and customs?—I believe that the great body of the Canadians, with the exception, perhaps, of an hundredth part of the whole, would be very well satisfied with the establishment of those laws.

Were the people of Canada very apprehensive on

Digitized by Google

account of the supposed danger to religion?—I never heard them express much apprehension with respect to any danger to their religion; but they have at times expressed dissatisfaction at the disqualification and civil inconvenience attending the exercise of their religion; not any that the performance of mass would ever be impeded.

What do you understand to be the sentiments of the Canadians with regard to the form of government they would wish to live under?—I have not heard many of the Canadians enter fully into the subject. I believe their opinion is that of our poet,

"Whate'er is best administer'd is best."

They have no predilection at present in favour of a legislative council, or in favour of an assembly: I speak of the generality of the people. There are a few persons who have thought more upon the subject than the rest: I believe they would incline to an assembly.

What sort of an assembly do you suppose they would like: an assembly of which they might have a part, or one which consists of his Majesty's own subjects?—I have heard some of them say, they would rather have an assembly consisting equally of Protestants and Catholics, or at least of such Catholics as would take the oath of abjuration of the Pope's power, but not the declaration against transubstantiation,—than be governed by the legislative council. I have heard so; but in general those who express a wish for an assembly, wish for one without the exclusion of any Catholics on account of the oath:—I mean the oath as it now stands; I mean that which is commonly called the oath of supremacy. I do not know any instance of a Canadian taking that oath; but they have been under no temptation to do it. Hitherto they have had no assembly. As to being a part of the council, it would have been necessary to take the declaration against transubstantiation, as well as the oath of supremacy: therefore the distinction has not been tendered to them.

Do you think the Canadians are desirous of serving upon juries in civil causes?—I believe they would like to have the option of doing so continued to them. The ordinance that directed that court, directed the jury to be optional; and I know that many of the people do actually choose to have a jury, when their causes come

Digitized by Google

to be decided there; which I look upon to be more conclusive than any testimony of opinions may be.

Would they perform the office of jurymen?—They sometimes complained of that as a burthen.

Were not the forms of proceeding according to the French law, in matters of contract and recovery of debts, exceedingly different from those which prevail under our law?—I believe they were. The mode of execution is different. They had not the law of imprisonment in execution for a common debt: but it was introduced by the special description, by that original ordinance that set out the courts of justice. Since that time they have made very frequent use of it; full as much as the British subjects, or more so.

Do they in civil causes look upon the difference as a hardship?—I do not know that they do. I recollect a circumstance in the execution of a process in civil causes, in which the Canadians did complain of the English law, until it was corrected: that was, there was too great haste made in selling their landed property in a hurrying secret manner, and at a small price, for less than it was worth, in order to pay their debts. That has been corrected by an ordinance of March, 1770; and care has been taken to correct the process of imprisonment, which made them liable to imprisonment for debt even for the sum of twelvepence currency, in that part ninepence currency, by substituting the sum of forty shillings. The ordinance provides that an estate shall not be sold but after a proper time, and not at all for a debt less than twelve pounds.

Would not the Canadians think themselves happy without the restoration of their laws and customs, and if none of their forms of government were retained?—I think they would not be happy without the restoration of some of their family customs, as tenures of land, the mode of conveying, marriages, descent, and dower, and the rule in cases of persons dying intestate.

Do not the Canadians at present esteem it a burthen to be drawn from their homes to serve upon juries?—I have heard complaints of the kind.

Are you not of opinion that, in order to make a trial by jury more beneficial, it would be right for a certain allowance to be made to persons called to serve on juries?—I think it would. A small one would be sufficient: five

Digitized by Google

shillings a man would make them wish to be called upon juries. I think that allowance should be paid by the party that requested the jury.

In any and in what degree might it be expedient to establish the civil jurisdiction of England, in preference to that of the French, for trials of civil property ?—I received an answer from an able Canadian, M. Cugnet,[1] to whom I have no reason to be partial, as he has written very spiritedly against my plan,—that the conquest was in itself a misfortune; and that they must bear with a great deal, he was sensible, in consequence of it; that the criminal law must be that of the conqueror, that is, *le loi du prince;* but that they must submit to it. He has further said, as to civil matters, that in point of justice, his Majesty ought to keep up all the ancient and civil laws of the Canadians; but even there he admits, that the form of administering justice must in the great courts be changed.

Would it be convenient, and for the interest of them as well as of us, that the trial by jury should be established ?—I think so; more especially if optional, as it takes away all pretence of hardship.

Is not the province of Canada, by the superior spirit and great capitals of the English merchants, very much improved ?—Very much.

Have not those merchants, who have so improved the province, engaged in those concerns and embarked their property there under the sanction of the English government ?—Undoubtedly.

Do you think the property so embarked would be equally secure, if the common law of England with respect to civil trials was entirely abolished ?—I rather think not equally secure. Certainly, they would not think it equally secure.[2]

What proportion of the trade of the province is in the hands of the English merchants ?—I can only tell from information I have received here in England: I am told it is seven-eighths. The increase of the trade is an undoubted certainty. I am inclined to think it is entirely owing to the industry of the English merchants.

Did not the intendant make regulations ?—I have seen

[1] Author of *Traité de la loi des fiefs* (Quebec, 1775).

[2] On May 31st the English merchants trading to Quebec had presented a petition against the abolition of trial by jury.

Digitized by Google

the commission of the intendant. I think there is a power given him singly, in certain cases, to make some regulations—not of the highest magnitude, but under some limitations, I cannot very well tell what.

Would the Canadians admit a part of the English law, rather than lose those benefits they find from the introduction of English merchants among them ?—I am persuaded they would. I apprehend, if the option was that the English merchants should cease to trade there, or that they should submit to have that part of the law, trial by jury, they would undoubtedly choose the latter.

Are not justices of the peace appointed to decide causes ?—Upon the first establishment of the civil government, General Murray endeavoured to soften the change of conquest to the conquered people. The method of administering justice was as follows : he first established a supreme court of judicature, called the King's bench, in which the chief justice of the province singly was to preside, and which was directed to determine all matters criminal and civil according to the laws of England, taking himself to be bound to give those directions in consequence of the King's proclamation. He also instituted, by the same ordinance, a court of common pleas, in which he directed the judge to determine all matters according to equity, having regard nevertheless to the laws of England, as far as the circumstances of the province would permit; and he gave an appeal from that court to the court of King's bench, which was directed to follow the laws of England strictly. He also instituted justices of the peace, and gave to each a power to determine civil matters, in a summary way, under five pounds of the currency of that province, about four pounds English.

Was not the tyrannical behaviour of those magistrates, in their department as judges, the cause of complaint among the Canadians ?—Some did behave tyrannically, and their conduct gave rise to great complaints ; others made use of their power so discreetly as to be a great blessing to the people. Of these, two were Frenchmen, Canadians, old subjects of old France before the conquest, both Protestants.

Were any of those men suspended from their offices ?—None. The governor, instead of suspending them, made

Digitized by Google

an ordinance, in March, 1770, whereby he took away the civil jurisdiction of all justices of the peace. It was governor Carleton's ordinance.

From what cause was it taken away ?—I do not know. It was a less odious way, perhaps, of disqualifying. It was a little while after I left the province.

I wish to know in general whether, if the English law was established in Canada,—the civil law—a few years' experience would not conciliate the Canadians in general to that form of judicature ?—I am persuaded it would; and more especially if methods were taken to remove some of their objections. How far it may be expedient to take such measures the House will judge. One of their objections is to juries, from the necessity of being unanimous, which they sometimes ridicule, by calling it a method of trial by strength of body and power to fast longest. I conceive, therefore, that that trial would be more agreeable to them, if the majority of the jury were permitted to decide the verdict; but as it is, with all its inconveniences, I believe they would choose to have it in the manner it is, because I see they frequently make use of juries in causes of consequence.

If that could be the case, would it not be a means of increasing their affection and attachment to the government of this country ?—In my opinion it would.

Would it not more speedily alienate their affection from both the laws and the government of France ?—I should think it would have that effect.

If that should be the case, would it not greatly promote the interest of the country and improve it ?—I should think it would.

From your knowledge of the French laws, should you wish to see the property of English subjects decided by those laws, in preference to the Canadian ?—My opinion is otherwise; but I am not able to balance the merits of the two codes of laws: I do not know enough of either of them.

If the French law should be established, do you apprehend there are judges sufficient in number, and of sufficient abilities, to administer justice properly to the English subjects ?—I doubt it; and besides, while I was there, the Canadians were much better satisfied with the integrity and abilities of the English lawyers in latter times than of their own; so as to employ the English lawyers in the court of common pleas in many causes, in preference

Digitized by Google

to their own Canadian lawyers, who have always been permitted, from the origin of the civil government, to practise in court.

In your judgment, would not the good object proposed by the re-establishing of the French laws and customs, be as well or better answered by retaining a system of English laws, with such alterations as it may be necessary to introduce ?—I think that the best method of giving satisfaction.

Are not those parts in which you conceive an alteration to be necessary, in order to gratify the prejudices of the Canadians, principally confined to the tenure of land, the mode of succession, and the descent of property ?—Yes ; adding to it, conveying their lands, selling, marriages, tenures, &c. I believe I might add, they would be pleased with the continuation of the law relative to intestate effects. It might be easily cured of its defects by the power of making wills : it differs little from ours.

Are you possessed of knowledge enough of the French laws intended to be introduced by this bill to give judgment by them ?—I should not like to undertake the task. The difficulty may be measured by M. Cugnet's endeavouring to prove that the French law is a matter of easy attainment. He tells us, in the manuscript I have seen, it may be learned by the perusal of only thirty volumes in folio and quarto.

I beg to know your judgment upon the propriety of re-establishing the Catholic religion in Canada, and restoring to the clergy their ancient rights and dues, without a similar establishment for Protestants ?—It is a very doubtful thing ; and, unaccompanied with restraints upon the bishop's great power, may be of dangerous consequence. It is certainly not necessary to the satisfaction of the Canadians ; because the option of paying tithe, or letting it alone, can never be disagreeable to them.

Do you understand that the Canadian subjects have at this time this option ?—They certainly have, and sometimes make use of it. They never presume to sue for tithe, either in the court of king's bench or common pleas, knowing there is no possibility of succeeding. The ground of that opinion of theirs and of mine is, the strong words of General Amherst's answer to the demands on the part of the French general for the continuation of the obligation of the people to pay their tithes and other

Digitized by Google

dues : " Granted, as to the free exercise of their religion ; but as to the obligation of paying tithes, that will depend upon the king's pleasure." That has been universally understood, till now, to have been a positive dispensing with the obligation. It has often happened that they have not paid tithe ; much oftener that they did, from their regard to their religion.

Did you ever hear in Canada that the claim to tithe extended to Roman Catholic landholders, and not to Protestant landholders ?—Everybody paid tithe indiscriminately. Since that everybody has been understood to be exempted from tithes indiscriminately.

Can you help us to a ground of distinction, upon which we might be induced to believe, that the right is a necessary one with regard to Catholic subjects, and not so with regard to Protestant subjects ?—I cannot conceive any.

From your experience of the inclinations and expectations of the Canadians during your time, do you conceive their expectations went the length of imagining they should have this re-establishment of the Catholic religion made effective, relative to what is meant to be given them by this bill ?—I believe they have been flattered with hopes of that kind, and I have reason to think promises of endeavouring to procure it have been made to them. How far they thought they would be successful I cannot tell.

Would they have been induced to believe such would be the result, if no such promises had been made to them ? —I am of opinion with Sir Jeffery Amherst, that so far from it, if the priests had been permitted to remain in the possession of their livings, and their places had been supplied by Protestants, the Canadians would have been satisfied. They would have been satisfied, if that had been pursued from the beginning ; but I do not mean to say, that so small a degree of indulgence, with respect to their religion, would be expedient now. . . .

Are the provisions introduced by the proclamation such as deserve to be called inapplicable to the state of the province ?—I think not, in the general extent. They require correction, and a few alterations. With respect to the laws, I beg leave to state a distinction. The laws that I have mentioned, I can divide into three parts : laws of tenure, laws of conveyancing, laws which I shall call a devolution of property. I conceive the laws of tenure,

Digitized by Google

by which I mean the laws relating to the mutual and reciprocal ties of landlord and tenant, all subsist, notwithstanding the proclamation, and do not need a revocation of it to revive them. These laws of tenure contain the laws that oblige the tenants to pay their quit rent and corn rent and their mutation fines, to their landlord, to grind their corn at his mill, and give him his meal-toll. If these laws were to be altered it would be taking away the property of the seigneur; which cannot be done, because it is granted by the capitulation. In the next class, I place the laws of conveyancing, which, though not affecting the very property of the people, because a man may be made to alter the mode of conveying his property, without absolute violation of property, is yet a necessary branch of the law for the convenience of enjoying property. These laws I consider as having been changed precipitately, and that they ought to be restored. In the third class, I place the laws of devolution; meaning by that the laws of inheritance and dower, and the right of the husband upon the death of the wife: the distribution also of the intestate's effects. Those laws may be changed by the legislature, without a breach of the capitulation. . . .

Are the bulk of the people of Canada, in their religion, devout or negligent?—In general devout and sincere; yet with many exceptions.

How do you reconcile that opinion with thinking that, upon the death of the present priests, they would have been content if Protestants were received in their room? —It was from a conversation I had with a native. It is an opinion.

Is it your opinion or not, that this would have satisfied them?—I really believe, if it had been done at first, it might have created some immediate inconvenience, but that would have worn out a long time ago. They are a submissive, quiet people. I believe, in many places, if a Protestant minister had been put in upon the vacancy of a priest, a very little pains taken by the Protestant minister would have brought over many to the Protestant religion. It is a mere conjecture; no such experiment has been tried.

Would not some extraordinary indulgence alter them very much?—I cannot say I have seen anything of it.

Do you know of any persons who wished to change their

Digitized by Google

religion and were afraid to own it?—I had rather be excused answering questions relative to particular persons. I apprehend, in general, that if encouragement had been held out to those who were disposed to become Protestants, there would have been a great number of converts. I believe our sending a bishop there has tended very much to check it: it has operated (so Canadian gentlemen express it) as a centre of union. It has made the priests necessarily more strict in the discharge of their duty than they were before, or would have been without it. Had this not been done, it is my opinion the priests themselves would gradually have forsaken first one doctrine, then another, of their own religion.

Upon this encouragement given to Protestantism, was there not an extraordinary zeal manifested in sermons against all doctrines of heresy?—I have heard so.[1]

Examination of William Hey, Esq., Chief Justice of Quebec.[2]

How long did you reside at Quebec as chief justice?—Six years; from the beginning of September 1766 to 1773.

Have you found the Canadian inhabitants dissatisfied with the introduction of the English law, and exclusion of their own laws and customs? Do they generally approve of the trial by jury in criminal causes?—I think they do.

Are they not equally capable of deciding in civil as in criminal causes?—I do not think the Canadians are in general called upon juries so often as other inhabitants of Canada.

Do you conceive they are less capable of distinguishing in causes of property, or manslaughter?—It is nicer to determine questions of property, which depend upon cases of law, than criminal causes which depend upon fact. I always found them extremely attentive to my directions; if I may say so.

Were they not willing to receive the like assistance in

[1] Some further evidence of Masères, and the re-examination of Carleton, dealing with the condition of the country under the French regime, and with the Indian question, is here omitted.

[2] For an account of Hey, see Morgan's *Biographies of Celebrated Canadians* (Quebec and London, 1862), p. 84.

Digitized by Google

civil causes ?—I think they were, in general, a very attentive and obedient people.

Are not the laws of Canada respecting lands, dower, and gift by will, allowed by the court and juries at Canada, respecting the Canadian subjects only, to be just as they were when they were in the possession of the French ?—I believe the court of King's bench did admit the Canadian laws and customs indiscriminately, in general. The ordinance directed them to do it.

Then you believe the Canadians would be content to have the laws continued to them upon this subject ?—I believe they would. They have made objections to juries. The higher part of the Canadians object to the institution itself, as humiliating and degrading. They have no idea of submitting their conduct to a set of men, their inferiors ; and the lower order look upon it (as in truth it is) a burthen to them.

I apprehend the customs of Canada are as much considered by the juries of Canada, as the particular customs are here by the judge and jury ?—I believe, in the court of King's bench, they are. I have thought myself obliged, in my capacity of chief justice, in every case of appeal, to determine by the same rule ; because it seemed to me a gross absurdity, that I should sit to determine the merits of a cause, governed by one kind of law, which they had determined under the provisions of another.

Is there any method so likely to reconcile the Canadians, in general, to our government, as the introduction of the English laws, by the intervention of a jury ?—There are two questions, rather. I believe they have great objections to the introduction of English laws. With regard to trial by jury, they certainly do not understand the benefits resulting from it as we do ; but I do apprehend, under certain modifications, it would not be disagreeable to them, both in civil and criminal causes. I think the trial by jury would not be disagreeable to them, if they were allowed compensation for their time and trouble ; and I think, further, if that unanimity which our law insists upon, was not to be insisted upon there, and that the jury were to be composed of an unequal number (suppose thirteen or fifteen), and that the majority of two-thirds were to determine the question, I do not, in my own mind, think there would be much objection in the main body of the Canadians.

Digitized by Google

Do you mean this regulation to be in criminal as well as civil causes ?—No. All in criminal causes.

Have you ever understood that the French suitors had ever been accustomed to make presents ?—I have never heard of any instance. I have found a great alacrity among the Canadians to canvass for the vote of a judge. That is still remaining in the province.

Have you heard any general complaint of juries deciding partially in causes of property, or by any improper influence ?—I cannot recollect any particular instance. Suitors have complained. I never heard any general complaint with regard to decisions. I have heard some with regard to their conduct in not deciding matters.

Why did they hesitate ?—Perhaps it might be from difficulties arising from the question itself; perhaps it might be prejudice as to the party, as between one another; but they certainly have departed without giving verdicts; and, I am ashamed to say, I did not punish them for it.

Then the Canadians do not think, under the proclamation, this country is under an indispensable necessity to allow them juries ?—I cannot take upon me to say. They have an option. They have not frequently used the option. According to the best of my information, it never has been in the court.

Would not the English be very much dissatisfied if juries were not to determine ?—Very much so. They are wonderfully zealous for the trial by jury; and, the misfortune is, they do not act up to it; for I can never get them to attend. They are not numerous. It certainly comes upon them at a very inconvenient time. They have, some part of the year, nothing to do; the rest of the year they are exceedingly busy.

Under the present bill, do you think you could administer justice equally to your own satisfaction, or to the Canadians in general, as you have done hitherto ?—The question is rather embarrassing for me to answer. I hope I may answer for the integrity of my own conduct.

Could you make yourself equally master of the Canadian law as of the English law ?—That must require a great deal of time and attention; and, I am afraid, more abilities than I am master of. If his Majesty thinks proper to continue me, I shall certainly try to make myself master of it. I am unequal to give any opinion upon this

Digitized by Google

bill. It is not in my province, before this House. I profess myself perfectly indifferent to the bill, and very unable to form an opinion.

If the benefits of the Habeas Corpus were explained to the Canadians, would they not think themselves highly favoured by it ?—I should think it impossible but they must think themselves highly favoured by it ; but I do not pretend to answer for the opinions of the Canadians. They are, in general, a very ignorant people—a very prejudiced people.

Are they not capable of understanding the benefits of juries, as well as those of the Habeas Corpus ?—I cannot answer for their capacity. They are, at present, in a state of great ignorance with respect to it.

If the Habeas Corpus is not allowed, is not arbitrary imprisonment in the power of the governor, without legal relief ?—I should apprehend there are abundance of restraints upon the governor, which will intimidate him ; and that the courts of justice would relieve against such. It would not be so instantaneous, perhaps, as the case might require.

What is the mode of relief that the courts would take, if it came to their knowledge, under the establishment of this bill ?—They would not give instant relief ; but I apprehend the party would be delivered at the commission of oyer and gaol delivery. If out of term time, not.

Suppose the imprisonment private, what remedy then ? —No remedy.

Without the permission of juries, may not money be levied upon any of the King's subjects, under this bill ?— I have had but one view of the bill. I did not know of my attendance here. It does not occur to me, the power of raising money—it is so directly in the face of every law. I apprehend it might not be done readily. The application must depend upon the decision of the court ; consequently, upon a jury.

If the Papists were relieved from the oath of transubstantiation, would they not take the other ?—The clergy would not. Perhaps some of the other inhabitants would. The clergy might admit the King's supremacy with regard to temporals. I speak only my own opinion. There is no such thing as public chapels. Debts have been sued for goods supplied to the Canadians.

Have the Canadians thought the decision fair ?—I

Digitized by Google

never heard any particular objection to them. I believe the import and export have increased.

What proportion is carried on by the English subjects residing there ?—The English subjects import more than the Canadians ; but when imported, the Canadians take it up from them to the country.

Have the profits of the possessions of the Canadians been increased since the conquest ?—They certainly grow more corn, are more populous, and likewise cultivate their land better. If this land had been now sold, no doubt it would have sold for more. The body of the people are not at all dissatisfied with the conquest. To be sure the higher part are.

Have juries been considered as judges of law as well as fact ?—They have taken it upon themselves to judge of law as well as fact. They have laid it down as a certain principle, that they will never give a special verdict upon any occasion.

Have you not paid attention to the Canadian law ?—I certainly have, whenever causes came up to the court of King's bench. Very few causes ever originated in my own court.

Do you understand that, by this bill, all the law in civil causes is to be repealed, and the law of Canada take place entirely ?—I understand it so.

What remedy is substituted in the place of the Habeas Corpus ?—I know of none. There is no long oppression ; they sit every week.

Under the present constitution of the English criminal law and the French civil law, could a person, not imprisoned for a crime by the operations of law, have relief by the gaol delivery under this present bill ?—My duty is to inquire into all prisoners, and to know for what they were confined. If I did not find a law for it, I should be tempted to make one myself.

Would the French civil law give any reparation to the party for such confinement ?—I should apprehend it would, upon the common principle of justice.

Is there any positive law in the Canadian code, that authorizes that idea, or is it what your humanity would make you infer ?—I apprehend, under every system of laws, there must be naturally a redress for an injury of that kind. What the particular mode of it is under the Canadian law, I cannot tell.

Digitized by Google

Do you mean, that any chief justice, or judge, would be entitled to assess any particular sum of money to compensate ?—Undoubtedly the court must sit and determine the quantity. I cannot speak to it. I never studied the law of Canada as a system. I have endeavoured, in all cases of information, to collect the law. I apprehend the aggrieved party must bring an action; and that, according to the evidence of the debt, the court would allow it him. I believe, where the matter has been doubtful, and has depended upon an intricate account, the court has *ex officio* awarded it to arbitrators to settle it. I mean under the old Canadian system.

Under the Canadian law, do you know of any power of imprisonment for debt ?—In particular cases there was a power; but, in general, they did not use the arrest for debt. For debts of a large nature, such as bills of exchange, I believe they did allow it; but, in general, not.

Do you conceive the recovery of the property of the English merchants, though in Canada, would be more or less easy, under this bill, than it was before ?—That will depend, in a great measure, upon the establishment of the courts for the administration of justice. If they were well supplied with proper powers—persons of discernment and integrity invested with proper powers—I should apprehend that property might be more easily recovered.

What do you understand, under the present form of the bill, would be the mode of administering justice in that country ? Who would stand in the place of the Canadian intendant ?—I apprehend that would depend upon the execution of the authority which is given to the Crown, by virtue of that clause, which enables the King to appoint courts of justice.

Do you apprehend the matter of courts of justice to be left at large ?—I do. I apprehend my present commission will be at an end.

What kind of a commission can be given under the Canadian law ?—I see no necessity for altering the commissions.

Will the establishment absolutely and unlimitedly of Canadian civil law, tend to encourage or discourage British subjects from purchasing land in that country ?—I believe the British subjects would have no objection to the restitution of a part of the Canadian laws; but I think

Digitized by Google

the restitution of the whole would very much disincline them to settle among the Canadians.

Do you think it would be impracticable, or even very difficult, to draw such a line of admission of Canadian laws, as would give satisfaction both to the new and old subjects ?—I myself have been unfortunate enough to differ with General Carleton in that respect. His Majesty was pleased to order the governor, the attorney-general, and myself to make our report upon the state of the province, and particularly with regard to grievances which the Canadians either felt, or thought they felt, under the administration of justice, as it was then administered; together with the remedies that we thought most proper to be applied to those grievances. The Canadians conceived that the introduction of the English laws, and the exclusion of their own, at least their doubt and uncertainty how far that matter went, was their greatest grievance; and the remedy proposed to be applied was the restoration of their own laws and customs *in toto*. I own, myself, I thought that went too far. I thought that such a mixture might be made, as would be agreeable both to the Canadians and British subjects, at least the reasonable part of both, and answer every purpose of state policy here at home. My idea was, that a country conquered from France, and retained by the treaty at the end of the war was, if possible, to be made a British province. I was, and still am, very sensible that must be a work of time and difficulty; but, however, I thought it an object worth attending to. The first thing that suggested itself to me under that idea was, that the laws of this country should be considered as the leading system of judicature in a province that was to become British. I was willing, however, to allow large exceptions in favour of the prejudices, the very natural and reasonable prejudices, of the Canadians. I was willing to allow them the whole law with respect to their tenures, with respect to the alienation, descent, and mode of conveying or incumbering their real property to the rights of dower and marriage, and the disposition of their personal estate in case of intestacy. This I thought was a very large field for them : quieting and securing their possessions according to their own notions of property, and not breaking in upon or disturbing their former settlements. The rest of the law, as the law respecting contracts, debts, disputes of a commercial

Digitized by Google

nature, the law of evidence, and many other matters of that kind, I thought might safely stand upon English bottom. These, with the whole criminal law of England, with the trial by jury, the presentments by the grand inquest, together with the establishment, or at least, toleration of their religion, with some reformation in the proceedings of the courts of justice, to exclude our modes of pleading, which the legal pleaders of the province are very unequal to, and to introduce a more compendious and simple method of process, more conformable to what they had been used to under their own government, would, I had hoped, have made up a system that should not reasonably have been objected to by either British or Canadians. I am of opinion, that at the time I stated that as the ground of my difference from General Carleton's report, it would have been satisfactory to the Canadians. I am in doubt now whether it will; but I still think it ought.

Why do you think it would not now be satisfactory to the Canadians?—I apprehend they have risen in their demands of late, and hope to be gratified to the utmost extent of their desires.

Upon what are these very extensive opinions founded?—I know of no particular ground for the extent of them. It appears to be a natural progressive state from the condition they were in, to that in which they now stand. They were terrified, and in a state almost of distraction. They neither expected to retain their religion or their laws, and looked upon themselves as a ruined and abandoned people; but when they saw attention wisely and humanely paid to their situation, they were willing to improve their condition, as far as their ideas carried them, to the absolute restitution of their whole laws and customs. But I know of no particular encouragement given them to ask anything. It was, I have no doubt, promised them, that their case should be fully and fairly represented, and that they might rely upon his Majesty's bounty and goodness for their relief.

Do you suppose they included in that general wish for the restitution of their laws and customs, a wish for the restitution of the French criminal law?—I do not apprehend they did. They seem perfectly satisfied with the English criminal law. I cannot conceive them so stupid as to wish for the French law. I speak of the great body

Digitized by Google

of the people. There may be a few persons of a very peculiar nature, that may wish for it.

Do not those persons you so properly describe as looking upon their situation with respect to their property and with regard to juries, desire the restitution of their criminal laws ?—I have no doubt they do. These are the noblesse.

Does not the objection of the higher people to the trial by jury, in civil causes, in a great measure arise from their being deprived of that influence they used to have from their power over the judges ?—I cannot say it does. I never heard any complaints of their exercising any undue influence over the judges.

Do you conceive that their readiness to have back the French laws did not arise from the expectation of success ? Have you not heard that the more powerful were the most successful than the lower people ?—I never have heard anything particular one way or the other : but one would be apt to imagine that such an influence might prevail. I am inclined to think, in general, that their courts of justice were pure, and justice fairly administered. There was a great control of the superior council over every judges' determination. As that council was composed of men of the first rank and character in the province, I cannot suppose they were under any undue influence, or that they would suffer any.

Would not the lower and middle Canadians be flattered and pleased by the power given by a jury, in proportion as the higher were mortified ?—I am inclined to think not. They would endure it, that is all : and, under the alterations I have mentioned before, it would be less disagreeable to them ; but I fear it would take a long time to convince them of the use or advantage of it.

Was an appeal to the superior council attended with no difficulty or expense ?—No difficulty, and very little expense.

Where will the right of hearing appeals be lodged under this law ?—I apprehend that will depend upon the constitution of the courts ; as they will, and must be new modelled under that law.

Do you think the former law of appeals will be inapplicable to the government of that country under its new law, without a special provision being made ?—There will be no court to appeal to. The present courts will be

Digitized by Google

abolished; the present judges will be abolished. The authority that constitutes these courts may, I presume, constitute the mode of proceeding in them, and how and where to appeal from them. But this act only directs, in my apprehension, that the rules of law to be observed in these courts should be those of Canada with regard to civil property.

Can you suggest anybody sufficiently qualified in the laws of Canada, to receive the appeal and do justice upon that appeal?—I have no particular person in my eye to mention.

Do you understand the appeal would be according to the spirit of the French law?—The ultimate appeal would always rest upon the King and council; but the stages it would go through must depend upon the constitution of the courts.

Do you conceive there would be no inconvenience arise to persons from having their property tried upon an appeal under such laws?—I cannot give an opinion upon the competency of the privy council.

Not with regard to the abilities of the privy council. But do you conceive that the education of a man for a privy councillor in this country, will enable him to judge of the extent of these Canadian laws? Is the Canadian system of laws a short system, or is it contained in many books?—It is much less complicated than the English, and contained in a much less number of books. The text of the Canadian law is contained in a very few articles; but the commentaries may be very voluminous.

Are there not many parts of the Canadian law immaterial to this point, but which might be attended with considerable inconvenience to the English subjects residing there?—I must confess I am not able to answer that question. The Canadian laws were extracted—those that were thought necessary and applicable to every purpose of securing their property—by a set of gentlemen in Canada; who, I believe, were very unequal to the work. The compilation is published, and has been printed: it is generally thought to be a faithful one.

In adopting that compilation, and establishing trial by jury in civil causes, might not such trial be obtained without any burdensome expense to the inhabitants?—I do apprehend it might, if the courts of justice would regulate the fees.

Digitized by Google

Would it not be difficult, in some cases, for the courts to regulate the expenses ?—I should think not, in material matters ; but in the fees of counsel, for example, no court can, or perhaps ought, to interfere.

Do you conceive that, at present, the Canadians are much attached to France, and would wish to be under that government again ?—I do not apprehend that the body of them would. No doubt the noblesse and the military have been great sufferers, from the loss of their employments and commissions ; and it is natural enough to suppose that they would incline to their old employments, under their own government. But I should hope that they, if proper indulgence were paid to them, might be made to withdraw from every idea of returning to their old government, and become good British subjects.

Do you conceive the Canadians would have any great objection to a provincial assembly, into which Roman Catholics would be admitted, under certain restrictions, such as taking the oaths ?—I believe they have no idea of advantage from it. They look upon the house of assembly as a house of riot, calculated for nothing but to disturb the government, and obstruct public servants.

Do they understand that there is a resemblance between the house of assembly and the House of Commons in this country ?—They do not understand the principles of either.

Have there not been conferences in that country, relative to the form of government, and arrangement of laws, that may best suit them ?—I know of no particular conferences in that country relative to a form of government and arrangement of laws.

Has it never been agitated with them, what would make them happy ?—I know of no conference among them upon that subject. Their ideas are a perfect submission to the Crown, and to any authority the Crown chooses to erect. They have a high confidence in his Majesty. If he chooses to call a house of assembly, I have no doubt they will compose it ; but they would not know what to do when they came there, nor have they any idea of the advantages of such an assembly.

They never, then, have been made to understand, by any of the King's servants, that it would be of advantage to them ? No pains have been taken to tell them that, by means of an assembly, they would have a power of internal

Digitized by Google

regulation ; but they have been taught to put the amplest confidence in the Crown ?—They require no instruction ; it is their natural habit. I have harangued the juries upon the advantages of the British constitution ; but, whether it was my fault in not delivering my ideas upon the subject clearly, or that they were not interpreted to them in the French language, I do not believe any Canadian took notice of what I said. I mean, my ideas with regard to trial by jury and the criminal law of England. I never mentioned any advantage of an assembly.

Have you ever understood that there was an absolute dislike to assemblies among the Canadians, or only a dislike in part ?—They do not understand them, and what they do not understand, they cannot be said to dislike.

Were they ever informed that assemblies could be managed so as to be extremely obsequious to government ?—They do not at all understand the method of making themselves so. To the English merchants, who are desirous of establishing the English laws, it would, of course, be an encouragement.

M. Lotbinière, one of the French-Canadian seigniors, and Dr. Marriott, the King's Advocate-General, were next examined, but contributed nothing of importance.

The various clauses were now discussed in Committee, before a House which grew rapidly smaller as the session dragged on.

Mr. *Edmund Burke*.—Before I proceed, allow me to state, in a few words, my opinion with regard to the principle of toleration. There is but one healing, Catholic principle of toleration which ought to find favour in this House. It is wanted, not only in our colonies, but here. The thirsty earth of our own country is gasping and gaping, and crying out for that healing shower from heaven. The noble lord has told you of the right of those people by the treaty ; but I consider the right of conquest so little, and the right of human nature so much, that the former has very little consideration with me. I look upon the people of Canada as coming, by the dispensation of God, under the British Government. I would have us govern it, in the same manner as the all-wise disposition of Providence

Digitized by Google

would govern it. We know that He suffers the sun to shine upon the righteous and the unrighteous; and we ought to suffer all classes, without distinction, to enjoy equally the right of worshipping God, according to the light He has been pleased to give them. The word "established" has been made use of: it is not only a crime, but something unnatural to establish a religion, the tenets of which you do not believe. Applying it to the ancient inhabitants of Canada, how does the question stand? It stands thus: you have got a people professing the Roman Catholic religion, and in possession of a maintenance, legally appropriated to its clergy. Will you deprive them of that? Now, that is not a question of "establishment"; the establishment was not made by you; it existed before the treaty; it took nothing from the treaty; no legislature has a right to take it away; no governor has a right to suspend it. The principle is confirmed by the usage of every civilized nation of Europe. In all our conquered colonies, the established religion was confirmed to them; by which I understand, that religion should receive the protection of the State in those colonies; and I should not consider that it had received such protection, if their clergy were not protected. I do say, that a Protestant clergyman going into that country does not receive the protection of the laws, if he is not allowed to worship God according to his own creed. Is this removing the sacred land-mark? What I desire is, that everyone should contribute towards the maintenance of the religion he professes; and if this is proper to be done, why not do it immediately? The religion to be established should be that approved religion which we call the religion of the Church of England. With regard to the religion of our own country, there would be propriety in the use of the word "established"; but I maintain, that everyone ought to contribute to the support of some religion or other. Does any gentleman mean to say, that the impious profligate, the moment he chooses to avow himself an unbeliever, can appropriate to his own use the tithe he has been accustomed to pay to the support of any religious establishment? Suppose one of those persons should turn Jew—I would give him complete toleration, but I say, let him support the synagogue. I will suppose this case; when a man is sued for his tithe, he will declare that he does not

Digitized by Google

profess the Roman Catholic religion. He then walks directly into that Mass-house, or church, for the support of which he has positively refused to engage himself; he says, he does not profess the Popish religion; and suppose he abstracts himself from all religion, he pays no tithe. If this be allowed, you are encouraging him to be an atheist. Therefore this clause does not provide for the establishment of Popery, but it does provide for the establishment of atheism. I have not yet heard a shadow of an answer to this charge; nor the slightest attempt made to remedy this evil. With a view of meeting it, I shall propose a clause, providing that the tithe paid by persons not professing the Roman Catholic religion shall be handed over to the Society for the Propagation of the Gospel. What objection can be made to my proposition I cannot conjecture. Does it trench on the rights of Englishmen? Does it trench on the rights of the ancient inhabitants of Canada? By no means. When the people become divided in their religion, why not follow the generous example set by the treaty of Westphalia; by which the duties of two or three establishments were discharged in the same church on the same day; the Roman Catholic, the Lutheran, and the reformed religion? It sets an example worthy of a Christian Church. It is a happy union, that has fixed peace for ever in those provinces.

Colonel *Barré*.—This bill, Sir, originated with the House of Lords. It is Popish from the beginning to the end. The Lords are the Romish priests, who will give his Majesty absolution for breaking his promise given in the proclamation of 1763. In this bill they have done like all other priests—not considered separately the crimes with which the bill abounded, but have bundled them all up together, and, for despatch, given absolution for the whole at once. When, however, the measure came down to this House, its members, not being so Popishly inclined, wished to have some information. They asked for papers: all the papers they asked for were not granted. They asked for evidence: all the evidence was not granted. The first man who governed the colony you would not hear, though I stated the reasons why he ought to be called. The chief justice and the attorney-general of Canada were both examined; and their testimony goes in the teeth of this bill. Thus it is decidedly opposite to the opinion

Digitized by Google

of two of the most respectable men in the kingdom. When the noble lord was asked for the papers containing these opinions, he refused to give them, alleging that the reports are very long: but the attorney and solicitor-general are both in this House, and I wish to hear the abstract of their opinions given by themselves. This they could have done, but the House would not let them. The advocate-general was called to the bar, upon which they said, we meant to create delay. The witness is so singular a man, that I cannot persuade myself to be out of temper with him. He was mounted very high, and pranced and pranced, and never moved from the place. I noticed a few expressions not becoming him as a witness at the bar, but altogether singular from a man who tells you, he had not memory to relate anything he had written, and is at the same time known to be of so singular a memory, that, without the help of notes, he can sum up the largest train of evidence, not thinking it worth while to take it down upon paper. Some time ago we were given to understand, that we were not to expect a general election: the report now runs, that parliament is immediately to be dissolved; and, in truth, Sir, after the passing of this bill, the sooner it is dissolved the better! In its infancy it was a very compliant one, and humoured the ministry in what I thought a strong measure, I mean the Middlesex election. It continued to do so up to the middle of its existence; and, upon its dissolution, people may say, as they did after the death of King Charles, that, by some papers found after its decease, there is great reason to suspect that it died in the profession of the Roman Catholic religion.

Mr. *Charles Fox*.—I wish, Sir, to state, in two or three words, what I consider to be the principle of this clause.[1] My objection to the bill consists mainly in my objection to this clause: it begins by stating, that "it is at present inexpedient to call an assembly." Now, that I can contradict this assertion, and say it is expedient to call an assembly, I will not assert; but, from all the information I have obtained in this House, I am inclined to think it is expedient. The principle laid down, in the course of these discussions, has been this, that the government of the colony ought to be assimilated, as much as possible, with that of the mother country. That the establishment of

[1] Clause XII. of the Act as finally passed.

Digitized by Google

this legislative council is a step towards such assimilation, I hold to be impossible. I am free to say, that the Canadians are my first object; and I maintain, that their happiness and their liberties are the proper objects, and ought to be the leading principle, of this bill; but how these are to be secured to them without an assembly, I cannot see. It is not in nature for men to love laws, by which their rights and liberties are not protected. I must have more substantial evidence before I consent to establish arbitrary power in that country: before I consent to establish such a government upon the principle, that *volenti non fit injuria*, I must be exceedingly well assured of the *volens*. You say, that the measure may be corrected. But, is it likely that this legislative council would go on, from day to day, considering how they could abridge their own power? This, Sir, is what can be expected from no set of men whatever. I never wish to see the liberties of a country dependent on such extraordinary virtue. Hitherto I have not heard a single argument against the establishment of an assembly. We have heard much of the danger of putting power into the hands of the Canadians; but as the persons of the greatest consequence in the colony are stated to be attached to French law and French customs, are we not, by preferring a legislative council to an assembly, putting power into the hands of those most partial to French government? No one has urged the circumstance of the people of Canada being Roman Catholics as an objection to an assembly, and I trust I shall never hear such an objection stated; for no one who has ever conversed with Roman Catholics can, I think, believe that there is anything repugnant, in their views, to the principles of political freedom. The principles of political freedom, though not practised in Roman Catholic countries, are as much cherished and revered by the people, as in Protestant countries. If there was danger, I should look for it more from those of high rank, than those of low.

Lord *North*.—I cannot admit, that the evidence taken at our bar has been in opposition to the principle of the bill; on the contrary, I think it confirms the most material parts of it. With regard to the particular clause before us, what have the witnesses at the bar said? The governor certainly is evidence against an assembly; the chief justice certainly is evidence against an assembly;

Digitized by Google

Mr. Masères is for an assembly. But, in point of fact, what came out in evidence? That there were in the province at present one hundred and fifty thousand Roman Catholic subjects, and about three hundred and sixty Protestant families, whose numbers we will suppose to be a thousand or twelve hundred persons; but very few of them are possessed of any property at all. The fair inference, therefore, is that the assembly would be composed of Roman Catholics. Now, I ask, is it safe for this country—for we must consider this country—to put the principal power into the hands of an assembly of Roman Catholic new subjects? I agree with the honourable gentleman, that the Roman Catholics may be honest, able, worthy, sensible men, entertaining very correct notions of political liberty; but I must say, there is something in that religion, which makes it not prudent in a Protestant government, to establish an assembly consisting entirely of Roman Catholics. The honourable gentleman is of opinion, that more is to be dreaded from the seigneurs than from those in the lower ranks. Sure I am, that the seigneurs, who are the great possessors of the lands, would be the persons who composed the assembly, and some of them will, I hope, be admitted to the legislative council; but then, the governor will choose those on whose fidelity he has the greatest reason to rely. They will be removable by the King in council, and will not depend wholly upon the Roman Catholic electors, or be removable at their pleasure. It is not at present expedient to call an assembly. That is what the act says; though it would be convenient that the Canadian laws should be assimilated to those of this country, as far as the laws of Great Britain admit, and that British subjects should have something or other in their constitution preserved for them, which they will probably lose when they cease to be governed entirely by British laws. That it is desirable to give the Canadians a constitution in every respect like the constitution of Great Britain, I will not say; but I earnestly hope, that they will, in the course of time, enjoy as much of our laws, and as much of our constitution, as may be beneficial for that country, and safe for this. But that time is not yet come.[1]

[1] A long discussion on the subject of trial by jury followed, in which some of the Opposition showed a tendency to talk for the sake of talking.

Digitized by Google

Mr. *Edmund Burke*.—I will now pass to the alleged hatred of the Canadians to serve on juries; their inaptitude to the exercise of the functions.[1] But a jury may be fit for them, though they may not be fit for jurymen. A love of justice must belong to the Canadians, as well as to other people; and I cannot believe that trial by jury is an odious thing to men who are subject to no undue prepossession against it. In a question upon matter of fact, where evidence is taken upon oath, between parties who are flesh of our flesh, bone of our bone, is there anything calculated so to prejudice mankind, as to make them look upon the question of trial by jury as an odious thing? What is the reason that you cannot repose confidence in the known reason of men, as well in that country as in this?—But it is said, the people of Canada are averse to juries! Have they complained of a jury? We have not one single syllable of complaint, which has been taken at first hand. Opinions inferred from conversations may be very easily mistaken. They may have complained, very properly, that they found the laws of the land all shaken; that they found a new rule given them, by which their family settlements were all deranged; that they were deprived of all share in the government. But, Sir, as to the alleged dislike of these people to the trial by jury, what does the gentleman who filled the office of Attorney-General in that country with so much honour to himself tell you? Did he point out this fact? Did he ever give such evidence? He spoke flatly to the contrary. He constantly spoke of it, not as a thing which they disliked, but as one of which they were ignorant. Now, dislike and ignorance are very different things. In their ignorance they confused the idea of a grand jury with that of a petty jury, and esteemed the law a tyranny. Even Mr. Hey's evidence had only a dubious word or two in it.

Having cleared my way thus far, there remains nothing but the evidence of a general officer. He, to be sure, spoke of the ignorance of the people of Canada: he told us of their having no wish to be tried by juries; that they preferred the mode of trial by a judge, from custom, habit, and education; and that they thought it strange that the English residents should prefer to have their lives and

[1] Burke had begun by some very excellent chaff of Thurlow and Wedderburn.

Digitized by Google

properties decided upon by barbers and shoemakers. You see, Sir, how much these people are to be pitied whose authority is thus quoted; how ignorant, how much deceived, were those persons who conversed with this great officer! how little they knew of the nature of that institution which they condemned! Their objection was chiefly an objection of pride. Now, if that was a good reason to urge against the institution there, it is a good reason against it here. But the objections of the Canadians, so far as they are solid and substantial, are easily removable, without injury to trial by jury. With regard to the objection that it is humiliating to be tried by a jury, it can only come from those who are desirous of being above the law; who are ambitious of lording it over their brethren. To check that disposition would be one of my reasons for giving a jury; because giving a jury would be giving protection to the majority of the people, against those whose pride and arrogance make them say it is humiliating to submit to a jury. I have no objection to all the authority which weight of family, great name, and fixed property in the country can confer. These are always respectable. But how does the establishment of trial by jury necessarily contradict the feelings of this class? It does not contradict their feelings in this country. All the objections of the Canadians against the measure therefore ought to vanish.

The next objection urged against the establishment of juries is, that they would be a burthen to the people. Now, that is an objection of another sort; but what sort of objection is it? The learned gentleman has stated it with truth: he says, that no man is willing to be a juror, because he is a juror for the benefit of the community, not for his own benefit. There is no one but would wish to be excused from discharging the duties of the office. In many cases here, men must be forced to serve. Why not do in Canada, as we do here? But, if a small allowance were made, such a measure, I have no doubt, would reconcile the Canadians:—I would, however, rather try a little longer, and see whether these two objections, that a jury is oppressive to the poor and humiliating to the rich, cannot be thoroughly removed without it.

Another thing I forgot to allude to. We are told, that to require unanimity in a jury shocks the Canadians. Truly, Sir, I know it is the substance and character of

Digitized by Google

a jury to be unanimous by our law; but if I could be suffered, in a great public cause, to give an opinion, I do not think that unanimity is absolutely necessary, but that the majority of a jury might do just as well. I believe it would prove no inconvenience; because, even in this country, the majority of a jury always turns the scale. The inconvenience is this,—the rest, finding they must yield, trifle with their oath; they cannot be quite so strict with their oath as I could wish them. I believe that, by the payment of a very small remuneration for the loss of time, all objections to juries will vanish. One learned gentleman has suggested, that compensation might be given to a jury to the amount of three pounds: but let it be left to the judge, jury and counsel to adapt the payment to the nature of the cause. Most blameable will they be, if they establish such compensation as will make the expense eat out the suit.

Having said this, I would remark, with regard to what the learned gentleman has charged against us about forcing laws upon them, that all such accusations vanish into air; they are not applicable to the case. We do not know that they abhor a jury—that they abhor a collective jury, in which they themselves will bear a considerable part. If it be proposed hereafter to give a jury to Canada, what will the answer be? "Dare I give what the Parliament of England has refused? "You never will have a jury, if you do not put it into this bill: it is absolutely and clearly impossible. How many years elapsed, before you thought of making any constitution for Canada at all! And now, instead of making them free subjects of England, you sentence them to French government for ages. I meant only to offer a few words upon the part of the Canadians, and leave them to their misery. They are condemned slaves by the British Parliament. You only give them new masters. There is an end of Canada.

Sir, having given up a hundred and fifty thousand of these people, having deprived them of the principles of our constitution, let us turn our attention to the three hundred and sixty English families. It is a small number; but I have heard, that the English are not to be judged of by number but by weight; and that one Englishman can beat two Frenchmen. Let us not value that prejudice.

Digitized by Google

I do not know that one Englishman can beat two Frenchmen ; but I know that, in this case, he ought to be more valuable than twenty Frenchmen, if you estimate him as a freeman and the Frenchmen as slaves. What can compensate an Englishman for the loss of his laws ? Do you propose to take away liberty from the Englishman, because you will not give it to the French ? I would give it to the Englishman, though ten thousand Frenchmen should take it against their will. Two-thirds of the whole trading interest of Canada are going to be deprived of their liberties, and handed over to French law and French judicature. Is that just to Englishmen ? Surely, the English merchants want the protection of our law more than the noblesse ! They have property always at sea ; which, if it is not protected by law, everyone may catch who can. No English merchant thinks himself armed to protect his property, if he is not armed with English law. I claim protection for the three hundred and sixty English families, whom I do know, against the prejudices of the noblesse of Canada, whom I do not know. I must put the House in mind of what an honourable gentleman said in the course of this debate—that it was seldom that any improvement was introduced into any country, which did not, at first, militate against the prejudices of the people. Was all England pleased with the revolution ? No. The wishes of the majority were sacrificed to the reason of the better part, and the interest of the whole ; and we are now enjoying the benefits of that choice—benefits brought upon the ignorant people, not by force, but with an easy hand. The Canadians are now struggling with their old prejudices in favour of their former laws. A new establishment is proposed to them ; which throws them into some disorder, some confusion—" All the interim is like a phantasma and a hideous dream." The honourable gentlemen opposite, taking advantage of this confusion, say—We have got a basis ; let us see how much French law we can introduce ! With a French basis, there is not one good thing that you can introduce. With an English basis, there is not one bad thing that you can introduce. Take the rule of the law of Canada for the rule of the constitution of your courts, and it will be the rule of all your proceedings : take it for the rule of your judicature, and sooner or later, it will be the rule of your legislature. How often have we had occasion in this House

Digitized by Google

to quote the practice of the courts below! how many lights have we derived from the learned gentlemen pleading there! how many lights have we derived from you, Sir! how many from the judicature of the upper House! Where there is a basis of French judicature, of French law, the legislature will never think of grafting upon it an English constitution.

With regard to state policy, which is the last point I shall touch upon—the preservation of their old prejudices, their old laws, their old customs, by the bill, turns the balance in favour of France. The only difference is, they will have George the Third for Lewis the Sixteenth.[1] In order to make Canada a secure possession of the British government, you have only to bind the people to you, by giving them your laws. Give them English liberty—give them an English constitution—and then, whether they speak French or English, whether they go to mass or attend our own communion, you will render them valuable and useful subjects of Great Britain. If you refuse to do this, the consequence will be most injurious: Canada will become a dangerous instrument in the hands of those who wish to destroy English liberty in every part of our possessions.

On June 13, the Bill, as amended, passed its third reading by 56 to 20. It was then referred back to the House of Lords, through which it passed on June 16 by a vote of 26 to 7, and received the royal assent on June 22. During the debate in the Upper House, it was vehemently opposed by Lord Chatham, in a speech of which only a very imperfect report has been preserved (Chatham Correspondence, vol. iv., pp. 351-353).

The Earl of *Chatham* rose, and entered fully upon the subject of the bill. He said it would involve a great country in a thousand difficulties, and in the worst of despotism, and put the whole people under arbitrary power; that it was a most cruel, oppressive, and odious

[1] Lord John Cavendish had already said: "I should think it material not to give them directly their own law again; it keeps up that perpetual dependence upon their ancient laws and customs which will ever make us a distinct people."

Digitized by Google

measure, tearing up justice and every good principle by the roots ; that by abolishing the trial by jury he supposed the framers of the bill thought that mode of proceeding, together with the Habeas Corpus, mere moonshine, whilst every true Englishman was ready to lay down his life sooner than lose those two bulwarks of his personal security and property. The merely supposing that the Canadians would not be able to feel the good effects of law and freedom, because they had been used to arbitrary power, was an idea as ridiculous as false. He said the bill established a despotic government in that country, to which the royal proclamation of 1763 promised the protection of the English laws. Here the noble lord read part of the proclamation, and then entered fully on the council and power vested in the governors, the whole mode of which, he said, was tyrannical and despotic : he was likewise very particular on the bad consequences that would attend the great extension of that province ; that the whole of the bill appeared to him to be destructive of that liberty which ought to be the ground-work of every constitution : ten thousand objections, he was confident, might be made to the bill, but the extinction of the mode of trial above mentioned was a very alarming circumstance, and he would pronounce him a bold man who proposed such a plan.—When his Lordship came to the religious part of the bill, he directed his discourse to the bench of bishops, telling them that as by the bill the Catholic religion was made the established religion of that vast continent, it was impossible they could be silent on the occasion. He called the bill a child of inordinate power, and desired and asked if any of that bench would hold it out for baptism ; he touched again upon the unlimited power of the governor, in appointing all the members, who might be made up of Roman Catholics only. He also took notice of an amendment which had been made in the House of Commons, which was a new clause, repealing so much of the act of reformation of the 1st of Elizabeth as relates to the oath of supremacy, and substituting a common oath of allegiance in its place. This act of Elizabeth, he said, had always been looked upon as one that the legislature had no more right to repeal, than the Great Charter, or the Bill of Rights.—His Lordship stated, with great force, many objections to the clause giving to the French Canadians so advantageous a part

Digitized by Google

of the fisheries of cod on the Labrador coast, to the great prejudice of the English fishermen on the banks of Newfoundland ; considering the said fisheries of Labrador as a nursery of French Canadian seamen, to man, in case of a French war, any squadrons of France in those seas. He exposed the train of fatal mischiefs attending the establishment of popery and arbitrary power in that vast and fertile region now annexed to the government of Quebec, and capable of containing (if fully peopled) not less than thirty millions of souls. He deduced the whole series of laws from the supremacy first re-vindicated under Henry VIII., down to this day, as fundamentals constituting a clear compact that all establishments by law are to be Protestant ; which compact ought not to be altered, but by the consent of the collective body of the people. He further maintained, that the dangerous innovations of this bill were at variance with all the safeguards and barriers against the return of popery and of popish influence, so wisely provided against by all the oaths of office and of trust from the constable up to the members of both Houses, and even to the sovereign in his coronation oath. He pathetically expressed his fears that it might shake the affections and confidence of his Majesty's Protestant subjects in England and Ireland ; and finally lose the hearts of all his Majesty's American subjects. His Lordship then said, that for these and other reasons he gave his hearty negative to the bill.

Digitized by Google

THE CONSTITUTIONAL ACT OF 1791

When by the Treaty of Versailles Britain acknowledged the independence of the American Colonies, the consequent influx of American Loyalists into Canada and Nova Scotia profoundly altered the social and political character of those provinces. Though the Loyalists had taken the side of Britain in the struggle, and fought hard for the ideal of a United Empire, they were as resolute believers in the right of colonists to manage their own local affairs as John Adams himself. Those who had settled on the St. John River at once claimed the right to send representatives to Halifax. When this was refused by Governor Parr, they appealed to the Mother Country to divide the province. In 1784 this division was made, and New Brunswick was separated from Nova Scotia.[1]

In Canada a considerable English-speaking population settled in the fertile country between the old French settlements and the American border, now known as the Eastern Townships. Further west, in the district afterwards known as Upper Canada, the first settlement of Loyalists was made on the spot where, under the French, Fort Frontenac had stood. Here a new town grew up, with the name of Kingston. Other Loyalists settled to the number of several thousands along the River St. Lawrence and the Bay of Quinte.

[1] Cape Breton was also separated at this time, but in 1820 was again united to Nova Scotia.

Digitized by Google

Many of the provisions of the Quebec Act were soon found to be unsuitable for men trained in such schools of self-government as New England and New York, and in 1791 the Constitutional Act was passed, by which the British Parliament endeavoured to give to the North American Colonies, in the words of John Graves Simcoe, the first Lieutenant-Governor of Upper Canada, a Constitution "the very image and transcript of that of Great Britain."

During the preparation of this Act numerous communications passed between the British Government and the Governor, Lord Dorchester,[1] of which one of the most important is here given, together with the views of Lieutenant-Governor Milnes on the working of the Act, given in 1800.

LORD DORCHESTER TO THE RIGHT HON. W. W. GRENVILLE.

QUEBEC,
8th *February*, 1790.

SIR,—I received the triplicate of your dispatch No. 2 on the 20th of last month, and avail myself of the first

[1] Formerly General Carleton. Lord Dorchester had been opposed to the division of the Province. He wrote to Lord Sydney on November 8, 1788 (P.R.O., Col. Corr., Q., vol. xxxix., p. 119): "A division of the Province, I am of opinion, is by no means advisable at the present, either for the interests of the new or the ancient districts, nor do I see any immediate call for other regulations than such as are involved in the subject of the general jurisprudence of the country. Indeed, it appears to me that the western settlements are, as yet, unprepared for any organisation superior to that of a county. . . . But though I hold a division of the Province at present inexpedient, yet I am of opinion that no time should be lost in appointing a person of fidelity and ability in the confidence of the Loyalists to superintend and lead them and to bring their concerns with despatch to the knowledge of Government under the title of Lieutenant-Governor. . . . Should a division of the Province notwithstanding be determined by the wisdom of His Majesty's Council, I see no reason why the inhabitants of these western districts should not have an assembly as soon as it may be organised without detriment to their private affairs, nor against their having so much of the English system of laws as may suit their local situation and condition."

Digitized by Google

opportunity to submit to His Majesty's Ministers such observations on the proposed Bill as occur to me in the moment.

The enclosed Draught comprehends the corresponding alterations, Engrafted upon the Bill, transmitted in your letter.[1]

The attainment of a free course of Justice throughout every part of His Majesty's possessions in the way least likely to give umbrage to the United States appears to me very desirable. For this reason the boundaries of the two proposed Provinces are described by a precise Partition line only of the Country of Canada, with the addition of such general words, as I hope might include the Territories subject to, or possessed by, His Majesty to the Southward of the forty-fifth degree of North Latitude on the side of Lake Champlain, as well as on the side of Oswego, Niagara, Detroit, Michilimakinak, corresponding as nearly as could be, with the idea expressed in your letter. But upon consulting the Chief Justice relative to the operation of this description of the Boundary, I find that he does not think it will answer the desired end.

The District of Gaspé it seems best for the present to leave annexed to the Province of Lower Canada, on account of its commercial connection with this Province, and because, notwithstanding its distance, the communication of it with Quebec by water is easier than its access to the seat of the Government of New Brunswick, in the present condition of that Province; the more so, as the difficulty of a representation from that District in an Assembly at Quebec is greatly diminished, by the opening left in the Bill for non-residents of any district being elected Representatives thereof.

But the Bay of Chaleurs being subject to different Governments, particularly during the present uninhabited state of that part of New Brunswick, gives an opportunity to ill disposed persons to elude the controul of the law to the detriment of the Fisheries, and good order; a clause to remedy this evil is therefore inclosed, which, if approved of, may be introduced into the Bill as an addition to the second clause.

Many advantages might result from an hereditary

[1] The original draft of the Bill, with Dorchester's proposed emendations, is given in the Report of the Canadian Archivist for 1890.

Digitized by Google

Legislative Council, distinguished by some mark of honour, did the condition of the country concur in supporting this dignity, but the fluctuating state of Property in these Provinces, would expose all hereditary honours to fall into disregard; for the present therefore it would seem more advisable to appoint the members during life, good behaviour and residence in the province. The number for Upper Canada to be not less than seven and for Lower Canada not less than fifteen, to be encreased by His Majesty as the wealth and population of the Country may require. To give them as much consequence as possible, in the present condition of the Province, they should be selected from among the men of property, where talents, integrity and a firm attachment to the Unity of the Empire may be found. I shall take the first opportunity of communicating the names of such persons as appear to me the fittest objects of this description.

The House of Assembly for Upper Canada might consist of not less than sixteen, and that for Lower Canada of not less than thirty members, or nearly double in number to the Legislative Councils, to be augmented also in proportion to the Population of the Country.

As far as I can judge at present it might be advisable to give the Towns of Quebec and Montreal in Lower Canada, a representation of four members each, and two to the Town of Three Rivers, dividing the Country Parishes thereof into twenty Circles, to send one member each. In Upper Canada, the four districts of Luneburg, Mecklenburg, Nassau and Hesse,[1] to furnish four members each, and hereafter to be subdivided into as many Circles and Towns, as their condition may require.

But the present time is too short to enter into a more minute detail, for which reason it is proposed to fix only the smallest number of members in the Bill, and to leave the actual subdivision and apportionment, necessary for an equal representation, to be ascertained by the Lieutenant Governors, with the advice of the Executive Councils, of the respective Provinces, under authority for that purpose from His Majesty.

[1] This division had been made by Dorchester in July, 1787. See Kingsford, *op. cit.*, vii. 259.

Digitized by Google

The qualifications of Electors, and persons to be elected, as to birth has been extended to inhabitants of the Provinces before and since the Conquest, because they may be considered upon an equal footing with the natives and to foreigners naturalized, because an accession to the Province of light and property from abroad is desirable and not likely to injure the King's interest under the guards proposed.

The disqualifications of Persons, attainted for Treason, and Felony, Deserters from the Militia when called out into service, and Bankrupts, until the full payment of their debts, have been added to the fourteenth clause, as a check to these evils and from a persuasion, that persons of that description are not entitled to any political honours or consequence.

On the expediency of inserting any Commercial regulations, as exceptions to the Laws of Canada, previous to investing the Assembly in Lower Canada with a right to negative all future changes, I regret that the complicated and professional nature of the subject, prevents my forming any other than a general opinion, that whatever regulations of this sort shall be thought proper to be adopted, should be enacted specially, unfolded to the people, and not introduced in bulk, and by general description.

The introduction of a Soccage Tenure I think necessary in the Upper Country and advisable in every part of the province, and this free of Quit rents from all holding no more than one thousand acres, as recommended in my letter to Lord Sydney, No. 18. And the Quit rent, which it may be judged proper to lay on large Tracts, should be given up to the Provincial Governments for their support, that all seeds of discord between Great Britain and her Colonies may be prevented. And independent of this important consideration perhaps the true principle of Œconomy is rather to obviate the necessity of sending money abroad, than to bring home any from Quit rents or Duties of any kind.

I take for granted, that the benefits, arising to the subject, from a change of the tenure in Fief to that in Common Soccage, are meant to run throughout, as from the King to his Tenant, so from the latter to all his undertenants, at the time of change, otherwise the advantages will be confined to a few, and an interest created un-

Digitized by Google

friendly to the improvement of the country. Some alterations have been made in the clause relative to this point, with a view of clearing doubt upon the subject.

The commencement of the operation of the Act as to every part excepting only the issuing the writs of Election, and calling together the Houses of Assembly, of the respective Provinces, has been fixed at such time as may be declared by His Majesty, with the advice of His Privy Council, not later than Six months after the notification of the Act in this Country, which I think will allow time sufficient for all necessary arrangements as to these points.

But for the convocation of the Assemblies a more distant period appears to be necessary, for the reasons above stated.

As soon as the proper plans for their organization shall have been prepared, His Majesty may order the Assemblies to be convened, as soon as convenient, previous to the first of January, 1792, as suggested in the thirty-first clause of the Bill, to which is likewise added a proposal for the temporary Government of the two Provinces in the interval by the Lieutenant Governors, and Legislative Councils thereof, according to the model of the Quebec Bill.

Should this be approved, the Royal indulgence of returning to England for a few months on my private affairs, would give me an opportunity to lay before His Majesty's Ministers all further explanations in my power on this subject.

Before I conclude, I have to submit to the wisdom of His Majesty's Councils, whether it may not be advisable to establish a General Government, for His Majesty's Dominions upon this Continent, as well as a Governor General, whereby the united exertions of His Majesty's North American Provinces may more effectually be directed to the general interest, and to the preservation of the Unity of the Empire.

I enclose a copy of a letter from the Chief Justice with some additional clauses upon this subject prepared by him at my request.

I am with much respect and esteem,
Sir, your most obedient and most humble servant,
DORCHESTER.

Digitized by Google

Chief Justice Smith[1] to Lord Dorchester.

Quebec,
5th February, 1790.

My Lord,—The clause inclosed for the Trial of extra-provincial offences appears to me to be necessary to encourage that spirit of enterprise, which leads our people in the Fur Trade to explore the Depths of this Continent and has carried them almost over to the Eastern shores of the Pacific Ocean. This Commerce, elsewhere wearing out, by the encreased Population of the North-eastern parts of the antient Continent, will soon become the Monopoly of our Nation. I have couched it in terms least likely of any that occur to me, to excite the Jealousy of our neighbours.

The Bill with the other additions for the intended Reforms in this Country, left to be supplied by Your Lordship's local experience, greatly improves the old mould of our Colonial Governments; for even those called the Royal Provinces, to distinguish them from the Proprietary and Chartered Republics of the Stuart Kings, had essential Faults, and the same general tendency.

Mr. Grenville's plan will most assuredly lay a foundation for two spacious, populous and flourishing Provinces, and for more to grow out of them; and compose, at no remote period, a mass of Power very worthy of immediate attention.

I miss in it, however, the expected Establishment to put what remains to Great Britain of Her Antient Dominions in North America, under one general direction, for the united interests and safety of every Branch of the Empire.

The Colonies of England were flourishing Colonies. It was the natural effect of the connection, the Character of the People, and the Genius of the English Constitution.

Ours will be so too. But that prosperity may be their ruin, and I trust in God that the wisdom which is dictat-

[1] Smith was a New York Loyalist. Consult Appleton's *Cyclopædia of American Biography*, vol. v. *sub nomine*. He must not be confounded with his son William, author of a *History of Canada*.

Digitized by Google

ing the new arrangements for us, will perfect its work by a system to prevent our repeating the Folly that has plunged the several parts of the Continent into poverty and distress.

Native as I am of one of the old Provinces, and early in the public service and Councils, I trace the late Revolt and Rent to a remoter cause, than those to which it is ordinarily ascribed. The Truth is that the Country had outgrown its Government, and wanted the true remedy for more than half a century before the Rupture commenced. To what period it continued to be practicable is problematical, and need not now be assigned.

To expect wisdom and moderation from near a score of Petty Parliaments, consisting in effect of only one of the three necessary branches of a Parliament, must, after the light brought by experience, appear to have been a very extravagant expectation. So it has been to my view above twenty years, and I did not conceal it.

My Lord, an American Assembly, quiet in the weakness of their Infancy, could not but discover in their elevation to Prosperity, that themselves were the substance, and the Governor and Board of Council were shadows in their political Frame.[1]

All America was thus, at the very outset of the Plantations, abandoned to Democracy. And it belonged to the Administrations of the days of our Fathers to have found the cure, in the erection of a Power upon the Continent itself, to controul all its own little Republics, and create a Partner in the Legislation of the Empire, capable of consulting their own safety and the common welfare.

To be better understood by Your Lordship, I beg leave to put a paper under this cover, in the form of additions to the present proposed Bill, partly suggested by the necessity of something to give a real and useful significancy to Your Lordship's nominal command of more Provinces than this.

As to the moment for commencing such an Establishment, that certainly must be the worst when it shall be most wanted. And since its Erection will speak Intentions, and may give Umbrage, that will be the best time in which that Umbrage shall excite the least apprehension.

The Debility of our Neighbours is notorious, nor can

[1] See as to this Greene, *op. cit. passim.*

Digitized by Google

be succoured during the Distractions of France, and the consternation spread by those Distractions through all Europe.

Here in these provinces, where it is of much consequence to set out with good habits, what juncture can be so favourable, as when the thousands thrown into them, under your Patronage and Direction, have their Loyalty confirmed by Resentments for their Sufferings; and so are disposed to take, and especially from your hand, whatever the wisdom of Great Britain shall prescribe, as a Gift of her Benevolence.

As to Canada, I mean that part of it to become Lower Canada, the biasses in it, if there are any remaining, to the Stock from which it was severed, are become perfectly harmless by that Body of English Loyalty Your Lordship has planted in the West, by their aversion to share in the Burdens and Miseries of the Revolted Colonies, and by the growing Discernment, that their safety and Prosperity is only to be found in the Commerce and Arms of Great Britain.

I am old enough to remember what we in the Maritime Provinces dreaded from this French Colony in the North, and what it cost to take away that dread, which confined our Population to the Edges of the Atlantic; and my mind is therefore carried, under such an Administration as the present one, into a strong Persuasion, that nothing will be neglected to enable Great Britain so to serve herself of that Power, she already possesses here, as to check any Councils to be meditated to her Detriment, by the new Nation she has consented to create. She may do more! but this is out of my province.

So much, My Lord, you'll forgive me, I could not repress what I owed to the vindication of my zeal in the sacrifice of my fortune for the British Interest, and as I think still for the best Interests too of the Country of my Birth. Most of all I owed it to my Sovereign, in whose Grace I found a Relief at the end of the Storm.

With a deep and grateful sense of all your kindnesses and the honour of your request of my poor abilities, upon questions of so great magnitude and consequence,

I am, My Lord,

Your Lordship's most humble and most obedient servant,

Wm. Smith.

Digitized by Google

Proposed Additions to the New Canada Bill for a General Government.

And to provide still more effectually for the Government, safety and prosperity of all His Majesty's Dominions in North America and firmly to unite the several branches of the Empire.

(1.) Be it also enacted by the same authority that there shall be (with a Governor General) a Legislative Council and a General Assembly for all His Majesty's Dominions and the Provinces whereof the same do now or may hereafter consist in the parts of America to the Southward of Hudson's Bay and in those seas to the Northward of the Bermuda or Somers Islands; And that His Majesty, His Heirs and Successors shall have power by and with the advice and consent of the said Legislative Council and General Assembly, to make laws for the peace, welfare and good Government of all or any of the said Provinces and Dominions. And that such Laws being passed by the said Legislative Council and General Assembly, and being assented to by His Majesty, His Heirs and Successors, or being assented to in His Majesty's name by the Person appointed or to be appointed Governor General of the Provinces and Dominions aforesaid, or such person as may be appointed by the Crown to exercise the powers of Governor General on the death or absence of such Governor General, shall be valid and binding on the inhabitants of the said Dominions or such part thereof as shall for that purpose be expressed.

(2.) And be it enacted by the same authority that such Legislative Council may be composed of at least members from each of the said Provinces to be appointed as His Majesty by His Royal Instructions to the Governor General for the time being shall authorize and direct who shall hold their several places in the said Council for Life subject nevertheless to such terms and conditions are as hereinbefore declared to be annexed to the trust and station of a member of the Legislative Council of either of the said Provinces of Upper and Lower Canada, and saving to His Majesty's Governor General or the Person upon whom that trust by His Majesty's appointment may devolve, power and authority from time to time by an

Digitized by Google

instrument under the Great Seal to be created for the British Dominions in North America to constitute, appoint and remove the Speaker of such Legislative Council.

(3.) And be it enacted by the same authority that such General Assembly may be composed of such persons as may be elected by the majority of the House of Assembly of the Province for which they serve to be manifested by Triplicate Instruments under the hand and seal of the Speaker thereof to the Governor General, the Speaker of the Legislative Council and the Speaker of the General Assembly.

(4.) And be it also enacted by the same authority that to give any acts of the said Governor General, Legislative Council and General Assembly, the force and authority of a Law, the same shall have been assented to in the said Legislative Council by the majority of the voices forming a house of Council according to His Majesty's appointment thereof, and shall have been assented to in the said General Assembly by such and so many Voices as will make it the Act of the majority of the Provinces, having right to be represented in the said General Assembly, and it shall be a House of General Assembly as often as there shall be assembled one or more members duly elected by each of the Assemblies of the said Provinces or of the greater number of such Provinces.

(5.) And be it further enacted by the same authority that it shall be lawful for His Majesty, His Heirs and successors to authorize and direct His Governor General for the time being or the Person upon whom that trust by His Majesty's appointment may devolve, in His Majesty's name and by an instrument under the great seal of the British Dominions in North America to summon and call together such General Assemblies in such manner as His Majesty shall be pleased to signify and command by His Royal Instructions to such Governor General.

(6.) And be it also enacted by the same authority that the Governor General under such instructions as he may have received from His Majesty may assemble the said Legislative Council and General Assembly where, and prorogue and dissolve them when and as often as he shall judge it necessary, Provided always and be it enacted that they shall be called together once at least in every two years, and to continue to have the right of

Digitized by Google

sitting seven years from the Teste[1] or day of the process or summons for their election unless they shall be sooner dissolved by the Authority aforementioned. But no member either of the said Legislative Council or General Assembly shall be permitted to sit or vote in the General Legislature until he shall have taken such oath as hereinbefore directed to be taken by the members of the Legislative Council and Assembly of Upper or Lower Canada, or not being an inhabitant of either of the said Provinces last mentioned, such other oaths and qualifications as are taken to become a member of the Parliament of Great Britain as by His Majesty's Instructions shall be directed and required.

(7.) And be it also enacted by the same authority that whenever any Bill which has been passed by the said Legislative Council and by the said General Assembly shall be presented for His Majesty's assent to the Governor General for the time being or the person exercising that trust under His Majesty's authority, it shall and may be lawful for such Governor General or other person exercising the said trust, at his discretion, subject nevertheless to such instructions as he may from time to time receive from His Majesty, His Heirs and Successors, either to declare His Majesty's assent to such Bill, or to declare that he withholds such assent, or that he reserves the said Bill until His Majesty's Pleasure shall be signified thereon. And no Bill so to be presented and not assented to in manner aforesaid shall have the force of a Law.

(8.) And be it further enacted by the same authority that nothing in this Act contained shall be construed to prevent His Majesty from appointing, erecting and constituting such general and executive Council and Councils as he may judge proper for the said Provinces and Dominions in general, and any other office, in His Royal Judgment and discretion requisite for the said General Government, or from nominating and appointing thereto from time to time, such persons as he shall think fit to compose the same Executive Council, or to execute such offices or from removing therefrom any person or persons whom he may think fit to remove.

(9.) And be it also enacted by the same authority that it shall and may be lawful for His Majesty to give

[1] *I.e.*, the Writ of Summons, which was authenticated by the royal attestation : "*Teste me ipso*," etc.

Digitized by Google

authority to His said Governor General, or the person exercising that trust, on his arrival in either of the provinces within his commission, to assume the authority and to perform all the duties and functions which the Lieutenant Governor thereof might exercise and perform, and the powers and authority of such Lieutenant Governor shall be suspended and so continue during the time of the Governor General's being within the same province, and that it shall also be lawful for His Majesty to give to the said Governor General for the time being, tho' absent in some other province of His General Government, authority respecting any act of any of the Provinces of such nature and tendency as His Majesty may see cause by His Royal Instruction to describe, to suspend the execution of such act until His Majesty's Pleasure shall be signified respecting the same; to which end it shall be the duty of the person administering the Government in every Province subject to the Governor General's authority, to transmit to him a copy of every Bill to which he has assented as soon as possible after the enactment of the same into a law, and shall upon the suspension thereof by the Governor General immediately cause the same to be made known by proclamation under the great seal of his Province, in the manner most effectual for making the same universally known to the inhabitants of the same Province, and all others whom the same may concern.

(10.) And be it further enacted by the authority aforesaid, that nothing in this act contained shall be interpreted to derogate from the rights and Prerogatives of the Crown for the due exercise of the Royal and executive authority over all or any of the said Provinces, or to derogate from the Legislative Sovereignty and Supremacy of the Crown and Parliament of Great Britain; but the Acts of Legislation of either of the said Provinces, as well as the Acts of the Governor General and the Legislative Council and General Assembly so to be made, shall be subject to the Royal disallowance as exercised heretofore respecting the laws of any of the British Provinces, and the said Dominions and all the Provinces into which they may be hereafter divided shall continue and remain to be governed by the Crown and Parliament of Great Britain as the Supreme Legislature of the whole British Empire.

Digitized by Google

LIEUT. GOVERNOR MILNES TO THE DUKE OF PORTLAND.

QUEBEC,
1st November, 1800.

MY LORD,—On my first taking upon myself the administration of the affairs of this Province, I was extremely struck with the wavering state in which I found the Interests of Government. I have since been at much pains to discover the real cause of this situation of things, which I plainly saw lay deeper than, I believe, is generally supposed by His Majesty's Ministers, and I am so forcibly impressed with a persuasion that this subject ought to be attended to, that I feel it my duty to lay before Your Grace such remarks as have occurred to me respecting it, in order that Your Grace may be fully apprized of the real state of the Country, and take such measures as you may think fit to strengthen the Executive Power in Lower Canada.

However excellent in itself the new Constitution may be which His Majesty has graciously been pleased to Grant to the Province, I conceive the Foundation of it must rest upon a due proportion being maintained between the Aristocracy and the Lower Orders of the People, without which it will become a dangerous weapon in the hands of the latter. Several causes at present unite in daily lessening the Power and Influence of the Aristocratical Body in Lower Canada. I cannot however but think that measures might be adopted to counterbalance in some degree this tendency, and I shall hereafter have the Honour to point them out to Your Grace; but in order to make myself clearly understood, I must first explain what I consider to be the principal causes by which the Influence of the Aristocracy in this country has gradually been reduced to its present state. The first and most important of these, I am of opinion, arises from the manner in which the Province was originally settled; that is from the independent Tenure by which the cultivators (who form the great Body of the People and are distinguished by the appellation of Habitants) hold their Lands; and, on the other hand, from the inconsiderable power retained by those called the Seigneurs, and the

Digitized by Google

little disposition they feel to increase their Influence or improve their Fortunes by Trade. Hence by degrees, the Canadian Gentry have nearly become extinct, and few of them on their own Territory have the means of living in a more affluent and imposing style than the simple Habitants, who feel themselves in every respect as independent as the seigneur himself, with whom they have no further connexion than merely the obligation of having their corn ground at his Mills, paying the Toll of a fourteenth bushel, which they consider more as a burdensome Tax than as a Return to him for the Land conceded by his family to their Ancestors forever, upon no harder conditions than the obligation above mentioned, a trifling Rent, and that of paying a Twelfth to the Seigneur upon any transfer of the Lands.

The second cause which I apprehend tends to lessen the Influence of Government in this Province is the prevalence of the Roman Catholic Religion, and the independence of the Priesthood; this Independence I find goes considerably further than what was intended by the Royal Instructions wherein it is particularly declared to be His Majesty's pleasure, "that no person whatsoever is to have Holy Orders conferred upon him or to have the Care of Souls, without a license first had and obtained from the Governor," etc., etc., but this Instruction has hitherto never been enforced, by which means the whole Patronage of the Church has been thrown into the hands of the Roman Catholic Bishops, and all connexion between the Government and the People through that channel is cut off, as the Priests do not consider themselves at all amenable to any other power than the Catholic Bishop.

A singular Instance lately occurred of this Independence: A Priest at Terrebonne, near Montreal, interfered in the most indecent manner in the late election for the County of Effingham. He exerted all his Influence to prevent the Solicitor General from being chosen, and violently supported a man who had been expelled from the House of Assembly on account of his having been convicted of Conspiracy, and who was consequently considered as a dishonoured Person. Upon this man being chosen, the Priest actually went so far as to perform High Mass in the Parish Church, to return thanks, as he termed it, "for the re-election of this Martyr." In

Digitized by Google

Justice to the Canadian Bishop[1] I must add, that upon my representation he did everything that was proper to be done on the occasion.

Another circumstance which has greatly tended to lessen the Influence of Government since the Conquest, has arisen from the necessity which then existed of disembodying the Militia, but as I am by no means of opinion, considering the circumstances which took place a few years since, that it would be either practicable or prudent to call on the Militia at this particular moment, I shall not enter further into this subject at present, though I shall hereafter revert to the Militia, even in its present state, as a means by which a certain degree of Influence might still perhaps be established in the several parishes.

It may be unnecessary to observe to Your Grace how much more Important the above facts are become since the establishment of the new Constitution. In the time of French Government, an Ordinance issued in the name of the King was sufficient to enforce the Execution of any measure that was deemed expedient, without any discussion taking place upon the subject, or its entering into the mind of the unlettered Habitant, to doubt for a moment the propriety of the measure. But since the establishment of the present Constitution in the year 1792 the case is very different, everything being previously discussed in the House of Assembly, and unless a certain preponderance can be maintained in that House, which at present is by no means as firmly established as I could wish, the Power of the Executive Government will insensibly become nothing. Very few of the Seigneurs, as I have already hinted, have sufficient Interest to ensure their own Election or the Election of anyone to whom they give their support in the House of Assembly; and the uneducated Habitant has even a better chance of being nominated (though he cannot perhaps sign his name) than the first officer under the Crown. There was a moment when I even despaired of getting the Attorney General into the present Assembly and though it is undoubtedly better composed than the last, it is far from being so respectable a Body as Government might wish.

[1] Mgr. Hubert.

Digitized by Google

The Canadian Habitants are, I verily believe, an Industrious, peaceable and well disposed People, but they are, from their want of education and extreme simplicity, liable to be misled by designing and artful men; and were they once made sensible of their own Independence, the worst consequences might ensue. They are, in fact, the sole proprietors of nearly all the cultivated Lands in Lower Canada, the Seigneurs and Ecclesiastical Bodies to whom the Lands were originally granted, having conceded the greater part of the Lands for ever, with little or no reserve, to the Cultivator, in small Parcels of from one to two hundred acres, retaining only, as I have already observed, the Property and Profits of the Mills, a certain proportion of the Produce, which is sometimes paid in kind and in various ways, and the Lods and Ventes; and this species of property attached to the Seigniorial Rights, is by the Ancient French Laws of Inheritance (which occasion frequent subdivisions of Property) in a few Generations become quite inconsiderable, whereby the situation of the Seigneur has in many Instances been reduced below that of the Vassal. Each Habitant cultivates as much Land as he can manage, with the assistance of his own Family, and as is necessary for its support; and having thus within themselves from year to year all the necessaries of life, there cannot be a more independent Race of people, nor do I believe there is in any part of the world a country in which equality of situation is so nearly established. Except in the Towns of Quebec, Montreal and Three Rivers, little or no difference is observable in the affluence of the Canadians, but what may in some measure arise from the local circumstances of more or less favourable situation, a richer soil, or a greater or less degree of exertion.

The counties are divided into Parishes, each Parish chiefly extending about three leagues along the River St. Lawrence and Chambly, and to each of which there is a Parochial Church; the principal person in every Parish is in general the Priest, another next the Captain of Militia, and it is through the latter that any business is transacted by Government.

Having endeavoured to give Your Grace some insight into the actual state of this country, which I could more fully enlarge upon if I was not apprehensive of intruding

Digitized by Google

too much upon your time until I have received your permission so to do, I shall proceed to point out the means by which I imagine the Influence of Government might be immediately extended to the distant parts of the Province, and though I am conscious this cannot be effected without a certain expense to the Mother-Country, I consider that expense as inconsiderable when compared to the sums it would require to quell any disturbance that might for want of timely precaution take place in the Province. The apprehensions of such an event though not immediate, is strongly impressed on the minds of some of the best Friends of Government.

I am well aware the chief object to be depended upon to increase the Influence of the Crown, will be by means of the Waste Lands; and in that point of View the delay that has taken place in the Land Business is greatly to be regretted, and it becomes an object of peculiar Importance to Government that no further delay may occur to prevent the clearing and settling of the immense Tracts that are now in the lands of the Crown undisposed of, as their being granted in free and common soccage will in time (if judiciously granted) form in this Province a body of people of the protestant Religion that will naturally feel themselves more immediately connected with the English Government, but as this cannot be expected to have any immediate effect, I am inclined to think that in the meantime much may be done first through the Catholic Priests, and secondly by means of the Militia.

The Present Catholic Bishop is extremely well disposed to Government, he is allowed by His Majesty £200 per annum, as Superintendent of the Catholic Church, in addition to which he receives from Government a Rent of £150 a year for the use of the Bishop's Palace at Quebec, which is occupied by Public Officers; he has lately applied to us for an enclosure[1] of this Rent, signifying at the same time that his income is very inadequate to the situation and the calls which are made upon it, which I have reason to believe is a just statement.

This application offers an occasion of attaching the Canadian Bishop more particularly to Government, if by such an encrease of his appointments as His Majesty

[1] Probably commutation.

Digitized by Google

shall graciously be pleased to allow his situation was made more easy, at the same time requiring of him a strict attention to that part of His Majesty's Instructions to the governor which I have before mentioned. This I am of opinion would tend very much to encrease that consideration which the Priests themselves ought to feel, and to encourage in their Parishioners, for the Executive Government, at the same time that it would ensure the co-operation of the Canadian Bishop.[1] But in order to carry this point, particular care must be taken to secure a proper moment, and if the Bishop should be decidedly averse to make the sacrifice required of him, it ought perhaps be deferred to the Peace.

The Priests have a 26th of all the Grain, which may be valued at £25,000 or £26,000 a year, which alone must make their influence very considerable, and especially as the Religious Bodies are in possession of nearly One Fourth of all the Seigniorial Rights granted before the Conquest (excepting those of the Jesuit Estates lately taken into the possession of the Crown, as will appear by the Inclosure). There are 123 Parishes and 120 Parish Priests.[2]

With regard to the Militia, it will be more difficult to give Your Grace a clear and distinct idea of the mode in which I am inclined to think use may be made of this Body to support the Interests of Government through the Province and to disseminate Principles of Loyalty amongst the Canadians in opposition to that spirit of Democracy which has lately gained so much ground in many parts of the world, but fortunately has not at present made any material progress in Canada.

[1] An attempt along these lines to gain control of the Roman Catholic Church was made some years later, and in 1810 the Hon. H. W. Ryland was sent to England to obtain the consent of His Majesty's Government. The plan failed, owing, it is said, to the opposition of Lord Eldon. See the very interesting documents cited in Christie's *History of Canada*, vol. vi., and those in the Report of the Canadian Archivist for 1892, pp. 16-81.

[2] When, in 1773, Pope Clement XIV. abolished the Society of Jesuits, its Canadian estates fell to the Crown. George III. at first wished to confer them on General Amherst, but this proposal proved so unpopular that it was abandoned. By an Act passed in 1832 the income from the estates was appropriated to education. At federation, in 1867, they passed under the control of the province of Quebec. In 1887, when the revived society was incorporated in that province, it was awarded compensation by the local government. See J. S. Willison, *Sir Wilfrid Laurier*, ii. 40.

Digitized by Google

The Population of Lower Canada is computed at about One Hundred and Sixty Thousand Souls, nine-tenths of whom reside in the Parishes before described, distinct from the Towns, and from these are drawn the Canadian Militia, which amount to 37,904 between the ages of 16 and 60. In the Parishes here alluded to, there are 292 Captains of Militia, who are chosen from amongst the most respectable of the Canadian Habitants (the Etat Majors amounting to 16, being in general chosen from among the Seigneurs); and here it is necessary to inform Your Grace how far under the dominion of France the Body of the People were regulated in all Public Matters by the Officers of Militia; the Captains of Militia and the Curés, being the persons employed to issue and enforce the Public ordinances, and through the authority thus delegated to them by Government, possessed considerable influence in their respective Parishes.

Although under His Majesty's Government these powers have in a great measure been withdrawn, especially since the establishment of the new Constitution, there still remains in the minds of the Canadians, a certain consequence attached to the character of Captain of Militia, and as I have before observed to Your Grace it is still customary on all public occasions to employ this useful Class of People to perform many services for Government, which they had hitherto done without other Reward than merely that arising in their own minds from the honour and respectability of the appointment; but this tho' sufficient to render it desirable is, as they feel, by no means an equal return for the considerable Portion of their time so employed. If then by means of an honorary and pecuniary reward, or by any plan that may be so approved of by the Executive Council, this class of the Canadians would be brought to consider themselves as the immediate Officers of the Crown, and peculiarly attached to the Interest of Government, there is no doubt that such an influence, from the circumstance of being equally diffused over the whole Province would effectually tend to keep alive among the great Body of the people, that spirit of Zeal and Loyalty for Monarchical Government which I believe to be natural to the Canadians, but which for want of an immediate class to whom they can look up, and from

Digitized by Google

their having no immediate connexion with the Executive Power, is in danger of becoming extinct.

That Loyalty is a lively principle in the hearts of the Canadians I have no doubt, if I may judge from the expressions of satisfaction which are shewn by all Ranks, whenever the Representative of His Majesty only passes through the Country; this I myself experienced (though at that time generally unknown) in the Tour I lately made through the Province.

There are several other means besides those I have already stated by which I am convinced a proper bias may be maintained in the minds of the Canadians, such as, I should hope, would secure the Province against any internal Commotion or Disaffection, the details of which I shall reserve until I shall receive Your Grace's sanction to trouble you further on this head, particularly as in order to give Your Grace a complete idea of this subject and the extent of my plan, it will be necessary to solicit your attention while I lay before you a sketch of the relative Expences of the Civil Department of Lower Canada, and the Military expenditures of the Canadas, by which it will appear how little proportion exists in the expences of those Departments, and what a considerable saving may hereafter accrue to Government, if according to the Plan proposed, and by a more liberal allotment to the Civil Expenditure, such an Influence could be attained over the minds of the Canadians as might in the course of time not only secure the Province from any Interior Commotion or disaffection but likewise ensure the co-operation of the Inhabitants in the defence of the Province against the attempts of a foreign Enemy without the aid of such a Considerable Military Establishment as the Mother-Country has hitherto maintained in this part of His Majesty's Dominions.

The deficiency of the Revenue, upon the average of the last five years of the Civil Expenditure, amounts, as will appear in the paper I have the honour to transmit, to £12,000 per annum, and the Military expence of the two Canadas, according to the best Information I can collect to about £260,000, this Expence would, in case of any Tumult or Insurrection in the Country, or of a war with the neighbouring States, most probably be double its present amount, and this Consideration alone

Digitized by Google

shows, how infinitely important it is to the Mother-Country, that Your Grace should be made acquainted, while there is yet time, with every means by which the Influence of the Crown may be increased and the hands of the Executive Power strengthened.

But there is another Consideration of perhaps greater importance than any above mentioned: Could such an Influence be obtained throughout the Province by means of the Priests and the Captains of Militia, as I have ventured to look forward to, that Influence when fully established might also be employed so as at all Times to ensure a Majority in favour of the Government in the House of Assembly, and to secure the election in that House of such men, as from their Education and knowledge of Business are most likely to see the real Interests of the Province in their true light, and not to be deluded by the fallacious arguments of any popular speaker from giving their entire support to the Executive Government. The defect of such an Influence over the Elections lessens the respectability of that Assembly in a very great degree, and particularly as from the absolute want which has so long existed of the means of Education and the inability of the Canadians to support the Expence that would attend sending their sons to the Mother-Country for that purpose, there are at present scarcely any rising men, and but few men of Talent among the Canadian Gentry.

From this and other Causes the Business of the House of Assembly is transacted with so little system, or regularity, that the oldest members are sometimes unable to form a judgment of what is likely to be the Result of their deliberations on the most common subjects.

While a due Preponderance on the side of Government is so manifestly wanting in the Assembly, it is considered by the well-wishers of Government as a fortunate circumstance that the Revenue is not equal to the Expenditure, and Your Grace will immediately see the necessity on this account of preserving, in appearance at least, that disposition in a greater or less degree, as there is reason to apprehend that in case the Province could be induced to tax itself in a degree equal to the calls of the Executive Government, the Right of Regulation and Control over the whole would probably be aspired to by the

Digitized by Google

Assembly,[1] which could not fail of producing the most injurious consequences to the Colonial Government, rendering it from that moment dependent on the will of a popular Assembly.

The burthen which is at present thrown upon the Mother-Country will be fully Compensated for, whenever the sums that shall arise from the sale of the Waste Lands begin to come in, and particularly if (as appears by the despatch of the 13th July, 1797, to Gen. Prescott, to have been in contemplation) it should be determined to appropriate the moneys arising from these sales to the purchase of Stock in the English Funds, and the Interest of this Stock to go in aid of the Civil Expenditures of the Province, in such manner as the Lords of His Majesty's Treasury may direct.

The Quantity of Land which from first to last will have been at the disposal of Government is computed at about One hundred and fifty Townships, equal to Ten million of Acres, which have actually been applied for, including as is supposed the principal part of the Ungranted Lands in Lower Canada that are deemed convenient and fit for cultivation.

Of the above about Thirty-five Townships only are in contemplation to be granted in the original Terms proposed in the year 1792, consequently one hundred and fifteen Townships will remain for the future disposition of the Crown, exclusive of the Church and Crown reserves, consisting of five-sevenths set apart in the Townships already granted.

The Wealth, Power and Influence that must accrue to the Parent State when these Lands become settled is an object of self-evident magnitude, and must in time make a full return for whatever will be found necessary in the meanwhile to support and secure so valuable a colony.

I flatter myself there can be no doubt that the Liberality with which His Majesty has lately been pleased to provide the means of Education in the Province, will go a great way to secure the affection and Loyalty of the rising Generation, who would otherwise be in danger of imbibing Principles inimical to His

[1] Experience after 1818, when the offer of the Assembly to provide for the civil expenses of the province was accepted, justified Milnes's apprehensions.

Digitized by Google

Majesty's mild and paternal Government, by the necessity which has hitherto existed of their being sent to the neighbouring states for Education.[1]

The respectable footing upon which the Protestant Church is about to be put in Quebec will likewise tend to increase Consideration which ought to prevail for the Established Church.[2]

When I began this Dispatch I did not foresee the length into which I have inevitably been drawn, but trust I shall stand excused in the opinion of Your Grace by the motives that have actuated me in this research, and I may truly say I have no other view than a full and conscientious discharge of all the duties that belong to the situation which His Majesty has been pleased to entrust to me.

I have the Honour to be, My Lord,
Your Grace's most obedient and most humble servant,
ROBT. S. MILNES.

[1] A Bill for establishing free schools for the teaching of English, and for "the incorporation of the Royal Institution for the Advancement of Learning" was carried in the session of 1800-1801, but remained without effect, largely owing to the opposition of the Roman Catholic clergy. See Kingsford, *op. cit.*, vii. 480-482.

[2] In 1799 the Duke of Portland, on behalf of His Majesty's Government, had given a site for an Anglican cathedral, and a small annual grant. See Kingsford, *op. cit.*, vii. 475-476.

Digitized by Google

PROPOSALS FOR UNION

FROM 1791 to 1838 the Constitutional Act remained in force, but both in Upper and in Lower Canada grievances soon arose. The Governor, the Executive Council, the Legislative Council, and the Legislative Assembly quarrelled among themselves, each proving strong enough to thwart the others, but not to assert its own supremacy. In Lower Canada this struggle was complicated by racial and religious antagonism, the French Canadians forming the majority of the Assembly, while the Governor chose his Councils mainly from the English inhabitants of Quebec and Montreal. A bitter dispute also arose between the two provinces, Lower Canada refusing to give to the Upper Province an adequate share in the Customs dues levied at the port of Montreal, an increasing proportion of which was collected on goods destined for use in Upper Canada. To remedy these evils, the Imperial Government in 1822 proposed a union of the two Canadas.[1] This proposal was withdrawn, owing to the fierce opposition of the French Canadians and the lukewarm attitude of the English, but that part of the Act dealing with the apportionment of the revenue passed into law as the Canada Trade Act.

[1] It is interesting to note the large share played by financial questions in this proposed constitutional change. Similarly, in the negotiations leading up to the federation of 1867 the financial relations between the provinces proved a rock which more than once threatened to wreck the scheme.

Digitized by Google

The chief arguments for and against the proposed measure are given in a private letter of Sir John Sherbrooke, Governor from 1816 to 1818, to Lord Bathurst, the Colonial Secretary, and in the following petitions submitted to the King and to the Imperial Parliament, the text of which is quoted from the Report of the Canadian Archivist for 1897.

The Legislative Councils of both provinces were at this time controlled by an English-speaking oligarchy, the core of which was composed of the prominent Loyalists and their descendants. In the answers of the chief of these to the questions of the Imperial Government, while the suggested union was but coldly received, a proposal for the federation of all the British North American provinces was put forward.[1] In 1824 several of these replies were published in London, including those of J. B. Robinson, Attorney-General of Upper Canada; John Strachan, Bishop of the same province; and William Sewell, Chief Justice of Lower Canada. The two main arguments advanced in favour of the proposition were the gradual extinction of French influence, or, at any rate, of French preponderance, and the strengthening of British North America against the rising power of the United States.

SIR JOHN COAPE SHERBROOKE TO LORD BATHURST.

CALVERTON NEAR SOUTHWELL,
NOTTS,
14*th March*, 1822.

MY LORD,—I have been honoured with your Lordship's private and confidential letter of the 11th inst., the contents of which shall not transpire, and in reply to your

[1] The first such proposal subsequent to the loss of the American colonies is found in a report on Nova Scotia made in 1784 by Lieutenant-Colonel Morse, and given in full in the Report of the Canadian Archivist for 1884. Oddly enough, he proposed that the capital of the united

Digitized by Google

question "*Whether the Union of Upper and Lower Canada would have a beneficial effect*," I answer, that if these Provinces continue in the same state they were in at the time I relinquished the Government, an Union would be very desirable, provided it could be established on proper principles, so that the undue influence of the Assembly should be somewhat controlled and the power of the Crown increased. But if such a measure were to be attempted, considerable difficulties must be expected before it could be reconciled with the jarring interests of the inhabitants and the variety of wild opinions so generally entertained.

Your Lordship's description of the persons usually returned to the Legislative Assembly of Lower Canada is perfectly correct. And the mischiefs arising from this cause are incalculable. I also agree that the Assembly of Upper Canada appears more tractable *at present*. But when I consider the vicinity of the latter Province to the United States, the population continually flowing in from thence, the constant communication and intermarriages between the families on both sides of the line, the number of Americans who purchase the best of the lands as soon as they are cleared and every other description of property in Upper Canada worth having; and when I look to the loose demoralising principles introduced by those people, I very much doubt whether reliance can be placed on a continuance of this tractable disposition.

I am fully aware my Lord of the evils arising from that ascendancy which the Catholics of Lower Canada exercise to the prejudice of whatever relates to the Protestant interest, but I suspect a very erroneous idea prevails in this country of the state of religion in Upper Canada. It might be supposed that the generality of the inhabitants being called Protestants were either of the communion of the established Church or of the Kirk of Scotland. Whereas the greater part are Methodists and Sectaries of every description. And I am sorry to add there

---

provinces should be placed in the island of Cape Breton. The next proposition of the sort was that of Chief Justice Smith, quoted on pp. 104–110. In 1809 a federal union was advocated in the Legislature of Nova Scotia by R. J. Uniacke. In 1814 a similar proposal was made to the Duke of Kent by Chief Justice Sewell of Lower Canada, who had married a daughter of Smith, and been much influenced by him. Subsequent propositions will be noted later.

Digitized by Google

are many who appear to have no sense of religion whatever.

Circumstances have materially changed since the separation of the two Provinces, and I could not avoid remarking when I was in Upper Canada, that in many instances a stronger bias prevailed in favour of the American than of the British form of Government. Whereas the Catholics in Lower Canada have a rooted antipathy to the Government of the United States, and have no dread equal to that of one day falling under its Dominion. This trait of character I venture to press on your Lordship's attention, as whatever may be the fate of the Upper Province, the Americans will never be able to establish themselves in Lower Canada, whilst this feeling is cherished.

In giving my candid opinion of the state of the two provinces, I shall be happy if I have in any degree answered the expectations your Lordship has done me the honour to express. And I have only to assure you of my willingness at all times to attend to your Lordship's commands. In repeating that I shall not fail to hold your Lordship's communication confidential, I must request that my answer may be looked upon in the same light, and have the honour to be, my Lord,

Your Lordship's very obedient and
Faithful humble servant,
J. C. SHERBROOKE.

TO THE KING'S MOST EXCELLENT MAJESTY:

The Petition of the Undersigned Seigniors, Magistrates, Members of the Clergy, Officers of Militia, Merchants, Landholders, and others, Inhabitants of the City and District of Quebec, Province of Lower Canada:

HUMBLY SHEWETH:

That your Petitioners have learnt with the greatest satisfaction, that Your Majesty has taken into your Gracious Consideration the State of the Provinces of Upper and Lower Canada, with a view to adjust certain differences relating to matters of Revenue complained of by the Province of Upper Canada; and as it appears that Your Majesty's Government in the course of its inquiry

Digitized by Google

into the sources of these differences, has become satisfied of the necessity of some change being made in the Constitution of these Provinces, but has postponed the adoption of final measures in order to give time to the people thereof to express their sentiments, Your Petitioners beg leave humbly to approach Your Majesty with a statement of various Evils under which they have laboured for some years and from which they have no hope of relief except by the interposition of Your Majesty and the Imperial Parliament.

The experience of thirty years has now demonstrated the impolicy of the Act of the British Parliament, 31 Geo. III., Cap. 31, by which the late Province of Quebec was divided into the Provinces of Upper and Lower Canada. To this Division Your Petitioners ascribe the present ineffective state of the Legislature and the want of those necessary measures for diffusing throughout the whole population of the country feelings becoming their character as British subjects, and introducing that general spirit of improvement which encouraged by the commercial system, universally pervades and invigorates other British Colonies. This division has created a difference of interest between the Provinces in matters connected with Revenue highly injurious to both, inevitably producing a spirit of dissension and animosity, and infusing into the Legislatures principles of a narrow and selfish policy adverse to the general development of their resources, and in an especial manner to the improvement of the channels of intercourse between them, and it is essential here to notice that nearly the whole of the Revenue of the two Provinces arises from the duties levied on Merchandize imported at the port of Quebec under Laws enacted by the Legislature of the Lower Provin.
It has also, from the control which the geographical situation of the Lower Province enables it to exercise over the trade of the Canadas placed the export Trade of the Upper Province at its mercy, being subject to such regulations and restrictions at the Shipping Port as its Legislature may choose to impose. From this circumstance, and from the feeble attempts made to improve the grand natural channel of the Canadas, strikingly contrasted with the enterprise and energy evinced by the neighbouring State of New York in the rapid formation of Canals, together with the indifference manifested on this subject

Digitized by Google

by the Legislature of the Lower Province; Your Petitioners have just reason for alarm, that if a similar system be persisted in, it may tend in a most injurious degree to increase the Commercial Intercourse of the Upper Province with the United States and divert the enterprise and trade of its inhabitants into a foreign channel and from these causes Your Petitioners not only apprehend the immediate loss of beneficial Trade, but that the gradual effect would be to interweave the interests of the Upper Canadians with those of the neighbouring States, thereby alienating their minds from the people of this province and weakening their affection for Your Majesty's Government, notwithstanding their present known and tried loyalty.

The Legislature of this Province has for a long time past been agitated by dissensions and their deliberations so much interrupted thereby, that Trade, Agriculture, Education and other objects of general interest have been neglected. There exists no Law for the Registry of Lands and Mortgages, so necessary for security in commercial transactions, no Insolvent Debtors' Act, and your Petitioners have looked in vain for a Law to provide for the unrepresented state of the Townships, a fertile and valuable portion of this Province settled by Inhabitants of British origin; of these Legislative Enactments and many others necessary to quicken the enterprise and industry of a commercial country, your Petitioners entertain little hope, until a Reunion of the Provinces shall have weakened the influence which has hitherto prevented their adoption in our statute book. The existence of this influence, your petitioners chiefly attribute to the impolitic division of these Provinces, which instead of rendering it the interest, as it is the duty of every Individual of the community to concur in measures to assimilate the whole population and to allay the jealousies naturally existing between the several classes, has unavoidably presented to the individuals, who first attained a majority in the Legislature, a temptation to perpetuate their own power by adopting a course directly opposite. To the same influence may be traced the small encouragement which has been held out to the settlement of the vacant lands of this Lower Province by British population, and consequently that of upwards of eighty thousand souls (a number equal to one-fourth of the actual

Digitized by Google

French population), who since the last American war have emigrated to this Province from Great Britain and Ireland, scarcely one-twentieth part remain within its limits.

Your Petitioners have observed with gratitude, the disposition which Your Majesty's Government has evinced by the Act of the present year of your Majesty's, cap. 119,[1] to apply a remedy to the existing political evil of these Provinces, but it is their humble opinion that the Provisions thereof are insufficient; that numerous circumstances concur to render vain any attempt permanently to regulate to the satisfaction of both Provinces the division of the revenue collected at the Port of Quebec unless united under one Legislature; and further they humbly beg leave to express their fears, that some of the provisions of this Act although dictated by the necessity of regulating the conflicting claims of the two Provinces may afford a pretext for others for imputing to the Imperial Parliament a disposition remote from the intentions and views of your Majesty's Government.

Having thus stated the evils under which they have suffered your Petitioners feel the fullest confidence in the justice and wisdom of your Majesty's government, and being satisfied that the subject will receive the most serious and deliberate consideration, would have felt much hesitation in presuming to suggest remedies; but as the Reunion of the two Provinces has been proposed in the Imperial Parliament, they beg leave to express their entire acquiescence in the adoption of that measure upon such principles as shall secure to all classes of your Majesty's Subjects in these Provinces their just rights and protect the whole in the enjoyment of existing Laws and their Religion as guaranteed—such a Union would in the opinion of your Petitioners afford the most effectual remedy for existing evils as it would tend gradually to assimilate the whole population in opinions, habits and feelings, and afford a reasonable hope that the wisdom of the United Legislature would devise a system of government of more consistency and unity, and of greater liberality to all classes than has hitherto been experienced—a Union on the Equitable Principles humbly suggested by your Majesty's Petitioners, will necessarily include a representation proportionate as near as possible

[1] The Canada Trade Act (3 George IV., c. 119).

Digitized by Google

to the numbers, wealth and resources of the different classes of inhabitants of these Provinces, will require no innovation in the Laws or Religion of the Country nor proscription in Debate or Motion in the Legislature, of the language of any portion of the Inhabitants, in every class of whom, bravery and loyalty have been evinced as fellow soldiers in defence of the Provinces.

May it therefore graciously please your Majesty that a Bill for the Union of the two Provinces of Upper and Lower Canada, on the equitable terms prayed for by your Petitioners, do pass into Law and the Constitution established thereby be preserved inviolate to your Petitioners and their posterity.

And your Petitioners as in duty bound will ever pray.

QUEBEC, *December*, 1822.

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland in Imperial Parliament assembled.

The Petition of the Inhabitants of the County of Wentworth in the District of Gore and Province of Upper Canada most respectfully sheweth. That your petitioners, His Majesty's dutiful and loyal subjects many of whom emigrated to this province at an early period of its existence as such (for the purpose of enjoying the blessings of British government) immediately drew forth the Paternal care and solicitude of His late Majesty George the third, who in the thirty first year of His Reign by and with the advice of the British Parliament gave to Canada a Constitution a transcript of their own and at the same time for good and sufficient reasons divided Canada into two Provinces; the Upper Province being principally settled by subjects of His Majesty who were accustomed to British Laws and using the English language.

Every Circumstance that has arisen during the period elapsed has tended to unfold its benefits by bringing its enactments into practical operation, raising our admiration of, and attachment to a constitution so well adapted to our feelings and contributing so largely to our happiness.

Conscious that our gratitude and attachment to His Majesty's government had been manifested on every proper occasion, it was with deepest regret and almost astonishment that we received the heads of a bill brought

Digitized by Google

before Your Honourable House during its last session for altering the said Act of 31st Geo. 3rd, Ch. 31, altering the same so as to destroy our liberty altogether, without our consent, or even our knowledge and without any misconduct on our part amounting to a forfeiture.

We beg leave to assure Your Honourable House, that the proposed alterations could only have originated in misrepresentations of the grossest nature and from utter ignorance of the localities of the Country and the wants, circumstances and feelings of the people.

It was thought proper in the present Constitution to leave the quantum of property possessed by Representatives to be assigned by the Provincial Legislature, which has been done so as to secure the respectability of the assembly without circumscribing too far the choice of the Electors; but raising the qualification of members to £500 Sterling agreeably to the Bill before Your Honourable House at its last session, would have the effect of disfranchising the electors altogether, some Counties not being able to select such qualified persons out of their whole population. Landed property likewise being made answerable for demands against the owners, in cases where Chattels would only be liable in England, causes real estate in this province frequently to change possessors. We would rather therefore resign the Representative Branch altogether, than to have the House of Assembly established on such principles, and to be told of every Act with which we could not accord, that it was our own; when we might, and frequently would be under the necessity of choosing men for our Representatives, no other way qualified, than by holding large tracts of wild land which is in effect one of the greatest nuisances in the province.[1]

The lengthening the duration of each Parliament to five years is to us particularly objectionable as extending too far the period before which the Representatives could again meet their constituents; and the vesting of the Executive government of each province with power to introduce two members into the Assembly without the exercise of the elective franchise, is we believe, without a precedent, and would give an undue influence to the Executive which in our opinion already possesses enough

[1] The Bill itself, and the Canada Trade Act, will be found in *Public Bills* (1822), vol. iii.

Digitized by Google

for all the proper purposes of government; for in this country officers under the government are not excluded from the legislature as in England, by whom every wish of the Executive may be made known and ably supported, as has been constantly the case.

The requisition likewise made upon the Legislature to make permanent provision for the administration of Justice and support of the Civil Government, would at once render that power a nominal and unsubstantial one, and deprive the House of Assembly of the only proper and effectual check necessary to balance the otherwise overwhelming force of the Executive. For our own short history has taught us that times of plenty are times of profusion, and by granting a permanent supply, the House of Assembly will part with the power to accommodate the expenditure to the amount their resources may enable them to grant, to curtail enormous contingencies, or to afford compensation to services that may imperatively call for reward. The propriety of this observation has become more evident by the experience of a few years, for from 1812 to 1816 an unusual quantity of money was in circulation in this province, and as might be expected, abundance in receipt produced extravagance in expenditure, both public and private. The reverse has been great and sudden, for we have experienced and do still experience a period of depression beyond parallel, during which, all the usual means of the country have scarcely been equal to the nett supply of an increased expenditure.

We proceed humbly to state our objections to an union of the Legislatures of the Canadas on any terms.

The population of this province is chiefly composed of subjects who have emigrated from Great Britain and Ireland, or from His Majesty's late American Colonies, and their descendants, who from a sameness of Origin, Language, Customs and Government, easily unite, commix and become one people.

While His Majesty's subjects, our Brethren of Lower Canada, sprung from a distinct origin, speak a different language, profess a different form of Religion, are wedded to their own peculiar manners and customs and each Legislature having enacted, adopted and retained Laws suitable to their own usages, customs and local wants; and these two provinces having been separated into different governments for more than thirty years; your

Digitized by Google

petitioners do not believe that two bodies so heterogeneous and discordant in all their parts as the Legislatures of Upper and Lower Canada must necessarily be can unite, cement and become one so far as to render equal advantages to both, which each has a right to expect from its own separate Legislature; and if an ascendancy should be given to the Representation of Upper Canada over that of Lower Canada, to which we do not feel entitled from our population, it would be offering injustice to our Brethren of the Lower Province, with whom we have no desire to quarrel nor by any measure to break in upon their rights and peace; and should the advantage be on the part of Lower Canada we must be at their mercy, and we have no right to expect that attention to our interests which our wants and circumstances require, the only ground of difference heretofore existing between us being an account of our Quota of the Revenue which having been put in an amicable train of adjustment by the prompt and timely interference of the British Parliament and His Majesty's Government at once does away with every semblance of reasonable argument that might be offered by those anxious for a reunion :—and also the extent of Territory would be so great that were it inhabited by the same people throughout, it must necessarily present such varied local interests that the wants of some parts of so extensive a colony will be more liable to suffer from neglect, from ignorance or from clashing interests than a less extent of territory would be.

To sum up all, Your Petitioners are of opinion that the different origin of the population of the two Provinces, the difference of their languages, habits, manners, customs and Religions, together with their varied interests, will necessarily produce efforts for ascendancy, create jealousies, strifes, animosities and contentions, which may break out in consequences of an alarming nature, and all without answering any one desirable object which we can foresee, or that may balance the least of the evils that appear to us so obvious.

Wherefore, We his Majesty's faithful subjects most earnestly beseech Your Honourable House to abstain from placing us in a situation so perilous, so contrary to our wishes, and as we fear so destructive of our best interests, and that Your Honourable House would forbear passing the said or any other Bill of a like nature into a Law

Digitized by Google

for uniting the Legislatures of Upper and Lower Canada, at any future Session of the Imperial Parliament.

And Your Petitioners as in duty bound will ever pray.

(329 signatures are attached.)

A LA TRÈS EXCELLENTE MAJESTÉ DU ROI :

LA PÉTITION *des Soussignés, Seigneurs, Magistrats, Membres du Clergé, Officiers de Milice, Marchands, Tenanciers, et autres Habitants de la Province du Bas-Canada.*

EXPOSE HUMBLEMENT :

Que c'est avec la plus profonde douleur et les plus vives alarmes que vos Pétitionnaires ont appris que dans la dernière session du Parlement des Royaumes Unis il avoit été, de l'approbation des serviteurs de Votre Majesté, introduit dans l'honorable Chambre des Communes, un Bill pour altérer l'heureuse Constitution de Gouvernement établie en cette Province par le Statut de la 31ème Geo. III., chap. 31.

Que l'événement d'une convocation prochaine du Parlement, pouvant faire perdre à la Législature de cette Province l'occasion que les Communes dans leur sagesse et leur justice ont bien voulu donner au peuple de cette Province d'exprimer à Votre Majesté et aux deux Chambres du Parlement ses sentiments sur un sujet d'une si haute importance, Vos Pétitionnaires croient qu'il est de leur devoir envers Votre Majesté, et envers eux-mêmes, de mettre sans délai au pied de Votre Trône, leurs très humbles représentations au sujet de ce Bill.

Qu'aucune des autorités constituées en vertu du dit Statut, ni aucune partie des sujets de Votre Majesté en cette Province n'avoient jamais sollicité publiquement qu'il y fut fait aucun changement, mais au contraire toutes les classes du Peuple de cette Province ont constamment manifesté un attachement inviolable à cette constitution, et ont tout récemment encore exposé avec ardeur, leur vie et leurs fortunes pour sa défense et celle du gouvernement de Votre Majesté, tel qu'établi par le dit statut.

Que ce Statut ne fut accordé aux sujets de Votre Majesté en cette Province, conformément à la promesse Royale, contenue dans la Proclamation du 7 Octobre 1763,

Digitized by Google

que sur un Message de feu Sa Majesté, recommandant au Parlement, la division de la Province de Québec après plusieurs Pétitions pour et contre sa passation, de la part des différentes classes dont il devait affecter les intérêts et après que les Pétitionnaires eurent été entendus à la barre de la Chambre des Communes, et en conséquence tous vos sujets en ces parties de Vos Domaines l'ont reçu et avec raison l'ont regardé comme un Pacte solennel, par lequel l'autorité Suprême de l'Empire leur donnait une garantie légale et permanente de la conservation de leurs libertés, de leurs propriétés, et de leurs droits les plus chers.

Que ce Statut modelé sur la constitution de la Mère Patrie par quelques-uns des plus grands et des plus sages de ses hommes d'Etat établit des pouvoirs suffisants pour réformer les abus, réparer les torts, appaiser les mécontentements, et promouvoir le bien général de la Province, sans exiger l'intervention de la Législature Suprême, intervention qui, lorsqu'elle a été exercée, s'est trouvée si pernicieuse en se chargeant des mécontentements purement locaux et temporaires, et en mésintelligences dangéreuses entre les colonies et la Métropole.

Que malgré divers obstacles et difficultés que les ressorts et l'action de la Constitution établie par le dit Statut font graduellement disparoître, la population de cette Province s'est accrue aussi rapidement que celle des Etats-Unis, sans recevoir une augmentation proportionelle par l'émigration, le revenu public s'est trouvé à peu prés suffisant pour subvenir à toutes ses dépenses nécessaires et son commerce ainsi que son agriculture, même dans ces temps si difficiles, ont fait des progrès considérables.

Que d'après ces considérations Vos Pétitionnaires ne peuvent que prévoir que si ce Bill, introduit à l'insu des habitants de cette Province, et si contraire à leurs vœux, passoit en loi, outre les maux qu'ils ont à craindre de ses dispositions, ils demeureroient, eux et leur postérité, sans assurance suffisante de conserver ce qui leur resteroit de droits et de libertés, que d'après un pareil exemple sur des représentations secrètes et partiales, ils seroient à chaque instant exposés à perdre, et qui d'ailleurs demeureroient à la disposition d'une Législature Coloniale illégalement constituée, étrangère aux intérêts, aux sentiments et au bonheur de la grande majorité des sujets de Votre Majesté dans cette Colonie.

Digitized by Google

Que les différends qui se sont élevés entre cette Province et celle du Haut-Canada, relativement à leur revenu, et qui ont été publiquement allégués comme le principal motif de l'introduction de ce Bill, ne sont pas une suite de la division des deux Provinces, mais proviennent uniquement de causes temporaires, toujours faciles à faire cesser, soit par des Actes de leurs Législatures respectives suivant lesquels chaque Province se borneroit à percevoir son propre revenu, chacune d'elles donnant libre passage et toutes facilités au Commerce de l'autre ou par des règlements faits dans le Parlement du Royaume-Uni, suivant la 46ème Section du dit Statut, de la 31ème Geo. III., Chap. 31, et après avoir entendu les deux parties.

Qu'on ne sauroit se promettre de l'Union des Législatures des deux Provinces de voir terminer d'une manière juste et efficace ces différends, puisque cette mesure laisseroit aux parties en litige à prononcer elles-mêmes sur leurs propres prétentions et donnerait nécessairement lieu (quelle que fût celle qui l'emportât) à des injustices et à des discordes nuisibles aux intérêts de la Mère Patrie et funestes à ceux des deux Provinces.

Qu'une telle Union feroit renaître ces dissensions résultant de la différence de langage, de religion, de lois et d'intérêt locaux qui agitèrent la Province de Québec, et que sa division en deux gouvernements séparés si heureusement fait cesser ; et qu'une Législature ainsi constituée, ne sauroit parvenir aux fins utiles d'une Législation éclairée, qu'il ne pourroit résulter que des lois fondées sur des renseignements insuffisants et nuisibles aux droits, aux intérêts, aux sentiments et à la situation de ceux pour qui elles seroient faites.

Que la situation géographique, la différence de climat, et étendue des deux Provinces, dont quelques parties peuplées sont à plus de quinze cents milles les unes des autres, forment ainsi que la difficulté des communications dans les pays nouveaux des obstacles insurmontables à l'Union projetée et que les sacrifices qui en résulteroient aux membres pour se rendre à leurs places, et aux constituants pour communiquer leurs besoins locaux au siège de la Législature, priveroient certainement une grande partie des sujets de Votre Majesté dans l'une et l'autre Province de leurs justes droits, et de toute participation dans la législation de leur pays.

Digitized by Google

Que c'est avec la douleur la plus réelle que vos Pétitionnaires voyent sans pouvoir se le dissimuler, que les dispositions principales de ce Bill, se dirigent contre les plus chers intérêts de cette partie des sujets de Votre Majesté, qui forment les neuf dixièmes de la population de cette Province. Et surtout qu'il y ait été introduit à l'égard de la langue et des établissements religieux d'un si grand nombre de vos sujets, des clauses qui doivent faire naître parmi les habitants de cette partie de vos domaines, des jalousies et des préjugés, funestes à leur repos et à leur bonheur, et qui paroissent incompatibles avec la dignité, la sagesse et la justice du gouvernement de Votre Majesté.

Que la clause de ce Bill qui interdit dans l'Assemblée projetée, l'usage de la Langue Françoise, la seule que parle et entend une si grande majorité des habitans de cette Province, leur feroit perdre indirectement le droit d'être élu à cette Assemblée, équivaudroit en effet pour eux à une privation absolue d'un des plus grands avantages qu'aient les sujets de Votre Majesté, gèneroit et restreindroit leurs franchises et libertés, et diminuant le nombre des personnes propres à les représenter efficacement, feroit des personnes qualifiées une classe privilégiée au sein d'une Colonie Britannique.

Que ce Bill en accordant au Haut-Canada dont la population n'est au plus qu'un cinquième de celle du Bas, autant de Membres qu'à cette dernière pour la représenter dans l'Assemblée Réunie, établiroit en faveur de la minorité une préférance humiliante aux habitants de cette Province, contraire à leur droits, comme sujets Britanniques, et dangereuse pour leurs intérêts.

Et que vos Pétitionnaires jaloux de conserver la part que leur assure la division des deux Provinces dans le pouvoir constitutionnel, de faire les lois que les concernent, ne peuvent aussi que désirer que leur co-sujets de Haut-Canada continuent à jouir d'un pareil avantage, commun à toutes les autres Colonies de Votre Majesté.

Qu'outre ces sources fatales de discorde, d'injustice et de confusion, ce Bill contient relativement à l'approbation des subsides levés sur le peuple de cette Province, et à d'autres objets, des dispositions contraires aux droits de naissance de vos Pétitionnaires comme sujets nés Britanniques, et à la déclaration expresse du Parlement.

Qu'il plaise donc à Votre Majesté, que le dit Bill ne

Digitized by Google

passe pas en loi, et que l'Heureuse Constitution et la Forme de gouvernement de cette Province, établies par le dit Statut soient conservées intactes à Vos Pétitionnaires et à leur postérité.

Et les Pétitionnaires de Votre Majesté ne cesseront de prier.

TO THE KING'S MOST EXCELLENT MAJESTY:

The Petition of the Subscribers, Your Majesty's dutiful and loyal Subjects of British birth or descent, Inhabitants of the City and County of Montreal in the Province of Lower Canada:

MOST HUMBLY SHEWETH:

That Your Majesty's Petitioners learnt with the most lively satisfaction, that the measure of uniting the Provinces of Upper and Lower Canada under one Legislature had been submitted to the consideration of the Imperial Parliament in its last Session, and have been impressed with the sentiments of the most respectful gratitude for the attention which has been bestowed on this measure of vital importance to both Provinces.

Under the agreeable anticipation that the evident policy and urgent necessity of a union of the Provinces will induce a renewal of the measure in the next Session, Your Majesty's Petitioners most respectfully beg leave to submit the principal considerations that render them in the highest degree anxious for the adoption of the proposed Union.

Your Majesty's Petitioners in all humility represent that the division of the late Province of Quebec into two Provinces, must be referred to as a measure which has been most prolific of evil. At the time the division took place upwards of thirty years had elapsed from the Conquest of the country by Your Majesty's Arms; and notwithstanding the unlimited generosity which has been displayed towards the conquered, by confirming to them their Laws and Religion, by admitting them to a participation in the Government and in all the rights of British Subjects, and by continued demonstrations of kindness towards them, no advances had been made in effecting a change in the principles, language, habits and manners, which characterize them as a foreign people. Such change

Digitized by Google

as well from past experience, as from the known operation of the feelings common to mankind, could not be expected while the conquered people were permitted exclusively to regulate their own Government, and thus cherish and maintain the national peculiarities, which it was equally the interest of the Parent State and of the Colony, should be gradually effaced by an intimate union with their fellow subjects of British origin. On this account it seemed evidently necessary in framing a new Constitution of Government that the representation should be so regulated as to ensure a fit and reasonable influence of British feeling and principles on the conduct of the Colonial Legislature. The measures for this purpose were at the time facilitated by the increase of the British population which had taken place, and by the settlements which had been formed by American Loyalists in the Upper Districts of the late Province of Quebec; in consequence of which a sufficiently numerous body of persons of British origin might, under a proper system of representation, have been introduced into the Colonial Legislature without offending against any principle of Justice, and certainly in strict conformity with the dictates of sound policy. Had this course which was anticipated at the time by the French-Canadian population and would then have been cheerfully acquiesced in by them, been pursued, Your Majesty's Petitioners are confident that the Province would now have been, in all essential particulars, an English Province. Unfortunately, Your Majesty's Petitioners in common with their fellow subjects of British origin, have to lament, that instead of adopting the policy which has been mentioned, the measure of dividing the Province was unexpectedly and to the utter surprise of the persons who had petitioned for a change in the Constitution, without imagining that it was to be accompanied by any such measure, resolved on; by which the English population in Lower Canada was rendered inefficient from the comparative smallness of their numbers, and the whole power of the representative branch of the Government was given to the French Canadians. It is a fact also, not unimportant to be stated, that both the British and Foreign Canadian subjects who had united in a joint petition to the Imperial Parliament, praying for a change in the Government, concurred through their agent, in petitioning, and were

Digitized by Google

heard by Counsel, against the division of the Province; but their efforts were unavailing.[1]

It is from this impolitic measure your Majesty's Petitioners state with confidence that the political evils under which Lower Canada has since laboured have principally resulted as their primary cause. The French-Canadian population for a short period of time after the adoption of the present constitution, partly from incapacity to exercise the political powers with which they had become invested, and partly from some remaining deference for their English fellow subjects, used their ascendancy with moderation; but this disposition was not of long continuance, and soon yielded to the inveterate anti-British and anti-commercial prejudices, by which they have not ceased to be actuated. The consequence has been, that persons of British origin, with the exception of a very small number, who have been elected rather for the sake of appearances than from any regard for their qualifications, have been excluded from the House of Assembly. The proportion of English Representatives for many years past, has hardly ever amounted to one-fourth of the entire number; and at the present time, of fifty members who represent Lower Canada only ten are English. This branch of the Government may indeed be said to be exclusively in the possession of the uneducated peasantry of the country, under the management and control of a few of their countrymen, whose personal importance, in opposition to the interests of the country at large depends on the continuance of the present vicious system. As illustrative of the spirit by which this body has been actuated, it will not be deemed irrelevant to mention that since the establishment of the present constitution, no person of British origin has been elected Speaker of the Assembly, although if regard had been had to ability, knowledge and other qualifications, a preference must have been given to persons of that description.

The composition of a Legislative body, such as that which has been described, under the influence of the prejudices of a foreign people, without the requisite ability for the discharge of its functions, and from which persons,

[1] On March 23, 1791, Mr. Adam Lymburner, a Quebec merchant, as agent for many dissatisfied Canadians, was heard at the bar of the House of Commons, and pled with marked ability against the Constitutional Act (see Christie, *op. cit.*, vol. i., pp. 74-114).

Digitized by Google

who by their knowledge, their property and their respectability and influence in society, would constitute its most eligible members stand excluded, certainly cannot be deemed fit for regulating the concerns of a British Province of so much importance as Lower Canada, consistently with the interests of the Province itself or those of the mother country. And if to those causes of disqualification be added the most marked repugnance to every measure calculated to assimilate the Inhabitants of the country with their fellow subjects in other parts of the Empire and to promote its commercial prosperity, it is impossible not to observe in the constitution of the Assembly of Lower Canada, the fertile source of all the evils complained of. Hence it is indeed, that the ever recurring differences between the several branches of the Legislature have principally arisen :—Hence it is that the powers of the Executive Government for the improvement and advancement of the Colony, have in a great measure become paralysed and utterly inefficient :—Hence it is that the extension of British settlements has been impeded and the increase of British population by the tide of emigration which for some years past has flowed so copiously into the province been prevented :—Hence it is in fine, that all commercial enterprise and improvement have been crippled and obstructed, and the country remains with all the foreign characteristics which it possessed at the time of the conquest, that is, in all particulars French.

The experience which your Majesty's Petitioners have had of these evils and the prospect of still greater, if an effectual remedy be not applied, have rendered the proposed Union of the Provinces to them a matter of the most intense interest. They will therefore, it is hoped, stand excused, if on a question involving their dearest interests as well as those of their posterity, as British subjects, they speak the language of truth without reserve. In doing so they feel themselves constrained, on this part of the subject, to declare that in their humble apprehension the adoption or rejection of the Union will determine whether this Province is to be in fact as well as in name, a British Province, or whether under the disguise of British dependence for some time longer, it is to be for ever French. In assuming the latter to be the consequence of not adopting the Union, your Majesty's petitioners are

Digitized by Google

grounded on the most exclusive facts. The French population of Canada, at the time of the conquest, was estimated at sixty thousand; and it is supposed may now exceed three hundred thousand. The whole of this population, though with the exception of an inconsiderable number born under the English dominion, is as strongly marked by the characteristics of their foreign origin, as to language, manners, habits and dispositions, as they were at the time of the conquest. Without a union this population must retain its present ascendancy in the government of the country, and will not, of course, of its own accord cease to be French. Its progressive increase under the fostering protection of Great Britain would therefore necessarily lead to the result, which without a Union is anticipated. And your Majesty's Petitioners cannot omit to notice that the unreasonable extent of political rights which has been conceded to this population to the prejudice of their fellow subjects of British origin together with a sense of their growing strength, has already had the effect of realising in the imagination of many of them their fancied existence as a separate nation under the name of the "Nation Canadienne"; implying pretensions not more irreconcilable with the rights of their fellow subjects than with a just subordination to the Parent state. Your Majesty's Petitioners would respectfully submit whether a system of government which has had such effects, and which in its ulterior consequences, must expose Great Britain to the mortification and disgrace of having at immense expence, reared to the maturity of independence a foreign conquered colony, to become the ally of a foreign nation and the scourge of its native subjects and their descendants, ought to be persisted in?

In respectfully representing the considerations requiring a Union, derived from the foreign character of a great part of the population of Lower Canada and its inimical disposition to everything British, Your Majesty's petitioners have only stated those grounds for the measure to which their situation and past experience have given peculiar force and urgency. But if those were even excluded from view, and the Population of both Provinces were entirely homogeneous, the necessity of uniting them for their common interest as well as that of the mother country would still be unquestionable. It is a consequence of the relative geographical situation of the Pro-

Digitized by Google

vinces, that Upper Canada is entirely dependent on Lower Canada for the means of communicating with the Parent state and other countries; it is only through Lower Canada, that the Upper Province can receive its supplies or export its surplus commodities.

The port of Quebec is the entrance common to both. This being situated in Lower Canada the inhabitants of Upper Canada can have neither free ingress into nor egress from, their country, except in so far as it may be permitted by the Government of Lower Canada. This Your Majesty's Petitioners humbly represent is a cause for the Union of the Provinces perpetual in its operation, and which cannot be counteracted without a long series of inconveniences and disasters to both. If while it may still be done, the population of the two Provinces be not gradually assimilated and identified in their interests by a Union, the differences between them from the causes now in operation and the collisions to which they will give rise, must have the effect of rendering the inhabitants of each a separate and distinct people, with the most hostile feelings towards each other, requiring only a fit occasion to urge them into measures of actual violence. In the progress of things towards this conclusion, the inhabitants of Upper Canada would imperceptibly be induced to form connections with their American neighbours and being unnaturally disjoined from Lower Canada, would seek to diminish the inconveniences arising by a more intimate intercourse with the adjoining states, leading inevitably to a Union with that country. The actual tendency of things to this result, while the Provinces continue under separate Legislatures, it is to be observed, is likely to be much promoted, by the artificial means of communication by canals, which have been lately formed at immense expence in the State of New York, affording to Upper Canada, if the outlet at the port of Quebec should be rendered inconvenient to her, an easy communication to American seaports; and her disposition to avail herself of this communication will obviously be increased while the Lower Province continues in its character to be French.

Some of the circumstances arising from the division of countries thus united by nature, Your Majesty's Petitioners beg leave to represent, have been practically exhibited in the disputes respecting revenue between the

Digitized by Google

two Provinces. Upper Canada relies on the revenue to be derived from import duties for the payment of her civil expenditure. The nature of her local situation precludes her from conveniently or effectually levying these duties within her own limits, it is at the port of Quebec only that she can levy them :—but this is in another Province, and while she has a separate Legislature, beyond the authority of her Government.

The consequence has been that till the recent interposition of the power of the Imperial Parliament, she has been dependent on the good will of the Legislature of Lower Canada, for a proportion of the duties levied at the port of Quebec, and has been virtually subject to taxation by the Legislature of another Province, without her concurrence or consent. It is in the nature of things impossible to determine what proportion of the duties in question ought to be allowed in Upper Canada, regard being had to strict Justice between the Provinces. And it has been urged that the claims of natural justice, on the part of Upper Canada, would only require for her, either a free transit for goods imported for that Province, or the payments to her of the duties actually levied on such importations at the port of Quebec. Your Majesty's Petitioners will not, on this occasion, presume to canvass the merits of the conflicting rights of the two Provinces on this subject, but will only observe, that if the Provinces be not united under one Legislature, no system which human ingenuity can devise, will be found effectual or satisfactory in obviating this ground of difference between them, or exclude just cause of complaint by one or other of the parties concerned.

In what respects the Regulations, recently established by an Act of the Imperial Parliament, for settling the differences now referred to, Your Majesty's Petitioners, while they acknowledge the beneficent views which have dictated them, feel it incumbent on them respectfully to state that these regulations if considered in any other light than as a temporary expedient, would not be found reconcileable with the just rights of the Lower Province or of its Legislature, and would be productive of great evils. Your Majesty's Petitioners cannot omit to observe that the proportion of duties allowed to Upper Canada is greater than, if regard were had to her present consump-

Digitized by Google

tion of dutiable articles imported at Quebec, she should be considered fairly entitled to, nor can they pass over in silence the extreme inconveniences and injury that would be occasioned by the restrictions imposed on the power of the Legislature of Lower Canada as a permanent measure, nor the inadequacy of arbitration to regulate, as proposed, the important interests in question. With the most perfect submission, your Majesty's Petitioners beg leave to express their belief that neither of the Provinces would be satisfied for any length of time with the arrangement referred to; and that the advancement and improvement of both would be most injuriously retarded by the incapacity under which the Legislature of each would labour to provide, by its own authority, a revenue adequate to its wants.

While Your Majesty's Petitioners thus humbly represent the conviction they feel that the Regulations above referred to must create dissatisfaction, and be found inadequate for the purpose intended, they cannot but observe in this inadequacy the strongest reason for adopting the remedy of a Union by which the evil intended to be palliated by those Regulations would not only, by the removal of its cause, be extinguished for ever, but a multitude of other evils be removed and prevented. In adverting to the injurious consequences arising from the division of the late Province of Quebec, Your Majesty's Petitioners cannot omit to notice more particularly the effect that measure has had in preventing the increase of the British Population in Lower Canada, and the development of its resources. The preponderance of the French Population in the Legislature has occasioned obstacles to the settlement of British Emigrants that have not been surmounted; so that the vast increase of British population to have been expected from this cause has been, in a general degree, prevented. The injury sustained in this particular may be easily appreciated when it is observed that, since the late American War, upwards of eighty thousand souls (that is a number equal to one-fourth of the actual French population) have found their way to this Province, from Great Britain and Ireland, and of these scarcely one-twentieth part remains within its limits, the rest, with the exception of a small number who have settled in Upper Canada, having been induced by the foreign character of the country in which they had sought

Digitized by Google

an asylum, and the discouragements they experienced, to try their fortunes in the United States. The loss thus sustained is not confined to those who left the country, but comprises their connections and friends who would have followed them. In the same proportion as the increase of British Population has been prevented, has the Agricultural and Commercial prosperity of the county been retarded and obstructed ; as it is to the enterprize, intelligence and persevering industry of that population that both Agriculture and Commerce must be principally indebted for their advancement. On this head it may be fairly advanced that, had not the impolitic division of the late Province of Quebec taken place, and had a fit plan of Representation been adopted, the British Population would now exceed the French, and the imports and exports of the country be greatly beyond their present amount.

The injury thus produced to the interests of the Mother Country and those of the Colony, by the French character which now belongs to this Country, and the predominance of French principles, Your Majesty's Petitioners humbly represent, without a Union of the Provinces, must be aggravated by the augmented influence of those causes arising even from a recent Act of liberality on the part of the Mother Country towards her Colonies. According to the Colonial system recently adopted, a direct intercourse between Lower Canada and France is now permitted ; the immediate effects of which will unquestionably be to give increased strength to these national prejudices which during sixty years of interdicted communication with France have remained unabated, and to render more inveterate the causes of disunion between Your Majesty's subjects in Lower Canada ; which effects as well as others more remote, affecting the stability of Your Majesty's Government, can only be counteracted by the proposed Union of the Provinces under one Legislature.

Your Majesty's Petitioners, without trespassing on Your Majesty's patience by a longer detail of the injurious consequences produced by the division, will beg leave to specify succinctly the benefits to be expected from a Union of the Provinces. By this measure, the political evils complained of in both Provinces would be removed. The French population in Lower Canada, now divided

Digitized by Google

from their fellow-subjects by their national peculiarities and prejudices, and with an evident disposition under the present system to become a separate people, would be gradually assimilated to the British Population of both Provinces, and with it moulded into one people of British character, and with British feelings. All opposition of interest and cause of difference between the Provinces would be for ever extinguished: an efficient Legislature, capable of conciliating the interests of the Colony with those of the Mother Country, and providing for the security and advancing the agricultural and commercial prosperity of the country, would be established by means of which the international improvement of both Provinces would not only be rapidly promoted, with the consequent benefits thereto arising from Great Britain, but their strength and capacity to resist foreign oppression be greatly increased:—the tie of connection between the Colony and the Parent State would be strengthened and confirmed, and a lasting dependence of the Canadas on the latter be ensured, to the mutual advantage of both.

Under a full conviction that these important and lasting benefits will be realized by a Union of the Provinces, Your Majesty's Petitioners humbly pray that an Act for uniting the Provinces of Upper and Lower Canada under one Legislature, may be passed, with such provisions for rendering the measure effectual, as in Your Majesty's wisdom may appear expedient.

And Your Majesty's Petitioners,
As in duty bound,
Will ever pray,
Montreal, December, 1822. &c., &c., &c.

The proposals for federation came before their time, but had the merit of familiarizing the minds of leading men, both in Canada and in England, with the idea of Union. Nor are there wanting noble passages in these letters, which should be borne in mind when reading the attacks made later on "The Family Compact." Thus, writing to the Hon. R. W. Horton, Under-Secretary of State, John Beverley Robinson, replying to the argument

Digitized by Google

that a federated British North America might desire independence, says :[1]

Allowing the objection stated to be one of weight in contemplating the possible consequences, it may be said, on the other hand, that it is an ungenerous and impracticable policy which would seek to hold countries in subjection by repressing their energies and retarding their improvement; and that a security far nobler, and productive at once of honour, advantage, and strength, to the Empire and the Colonies would be found in drawing more closely the ties which connect them : by allowing the Parliament of the United Provinces to be represented in the British Parliament by one or two members, who should have power to propose and to discuss measures, but not to vote, or to vote only on matters immediately affecting the colonies. It might be urged as a decisive objection to the completion of the system proposed, that it would be affording a precedent of a privilege which could not justly be afterwards withheld from any, and which it would be inconvenient, if not impossible, to grant to all the numerous colonies of Great Britain. But, perhaps, it would not be found impracticable to group the colonial possessions of the Empire into six or seven confederacies according to their situations, and to allow to each of these confederacies a representative in Parliament. This actual consolidation of the British Empire would at least be a grand measure of national policy, and by allowing to the inhabitants of the most remote regions of the Crown an opportunity of making known their wants, their interests, and their dangers, in the Great Council of the Nation, it would make them feel themselves as parts rather than as dependencies of the Empire : it would mitigate the irritation of colonial dissensions, and would make perfect and general through the Empire, that knowledge of the situation and circumstances of the colonies which, it must be confessed, is at present incomplete and confined to few.

To recapitulate. It is believed that to unite the British North American Provinces by giving them a common Legislature and erecting them into a kingdom[2] would be

[1] "Memoir on the Means of Promoting the Joint Interests of the Mother Country and her North American Colonies," pp. 39, 40.

[2] In 1867 Sir John Macdonald was extremely anxious that Canada should be declared not a Dominion but a Kingdom. This was negatived

Digitized by Google

gratifying to all those colonies ; that it would add to their security, confirm their attachment to the present Government, and make wider the distinction between it and the republican institutions of their neighbours ; increase their respectability, give them a greater community of feeling and interest among themselves, and connect them more closely with the Empire ; that it would put an end to all danger and inconvenience from petty factions and local discontents, and secure the public counsels of all the colonies from foreign influence.

And lastly, that every object would be certainly attained by it with respect to Lower Canada, which can be hoped for from the other and more partial measure, and without endangering the interests of the Upper Province or exciting alarm in either.

---

by Lord Derby, "who feared the name would wound the sensibilities of the Yankees."—JOSEPH POPE : *Sir John Macdonald*, i. 313.

Digitized by Google

LORD DURHAM'S REPORT

THE discontent, both in Upper and Lower Canada, went on increasing, till in 1837-1838 it broke out into a pitiful little rebellion, which had at least the merit of calling attention to the demands of the Reformers in a manner impossible to disregard. The result was the visit to Canada in 1838 of Lord Durham as Lord High Commissioner, and the publication of his famous Report. Below are given some of his chief dispatches to the Colonial Secretary, Lord Glenelg.[1]

CASTLE OF ST. LEWIS, QUEBEC.
August 9, 1838.

MY LORD,

The information which my residence here has enabled me to obtain as to the condition of the two Canadas is of such a nature as to make me doubt whether, if I had been fully aware of the real state of affairs in this part of the world, any considerations would have induced me to undertake so very difficult a task as is involved in my mission. I do not, however, wish it to be understood that I consider success impossible. On the contrary, I indulge in a hope that if the difficulties and dangers that are now so apparent to me are appreciated by Her Majesty's Government, so as to lead to their adoption of measures sufficiently comprehensive and decided to meet the emergency, the objects of my mission may be accomplished.

My sole purpose, therefore, in adverting to circumstances which threaten a different result is to impress upon

[1] Quoted from *Parliamentary Reports and Papers*. 1839. Vol. xxxii.

Digitized by Google

your Lordship my own conviction, which has been formed by personal experience, that even the best informed persons in England can hardly conceive the disorder or disorganization which, to the careful inquirer on the spot, is manifest in all things pertaining to Government in these colonies.

Such words scarcely express the whole truth: not Government merely, but society itself seems to be almost dissolved; the vessel of the State is not in great danger only, as I had been previously led to suppose, but looks like a complete wreck.

It is needless to point out the wide difference between this representation and the opinions on the subject which were, and probably still are, held by Her Majesty's Ministers; but since one who had the benefit of whatever information they possessed is nevertheless compelled to acknowledge that the truth, as it now appears to him, differs so much from his previous conceptions of it, what can he infer but that distance has precluded them from acquiring an accurate knowledge of the whole subject? This is my belief, and it becomes, therefore, an imperative duty on my part to convey to your Lordship the exact impressions which I have derived from personal inquiry and observation. I will not shrink from the performance of that duty.

On the present occasion, however, I propose to confine myself to a particular class of circumstances; that is, to those which relate to the Lower Province, and are of the most unfavourable character; my object in making such a selection being to state without reserve, in a separate despatch, certain facts and opinions, as to which, as coming from me, it is most inexpedient that any publicity should be given for the present: this despatch will therefore be marked "Secret."

The first point to which I would draw your attention, being one with which all others are more or less connected, is the existence of a most bitter animosity between the Canadians and the British, not as two parties holding different opinions and seeking different objects in respect to Government, but as different races engaged in a national contest.

This hatred of races is not publicly avowed on either side; on the contrary, both sides profess to be moved by any other feelings than such as belong to difference of

Digitized by Google

origin ; but the fact is, I think, proved by an accumulation of circumstantial evidence more conclusive than any direct testimony would be, and far more than sufficient to rebut all mere assertions to the contrary. If the difference between the two classes were one of party or principles only, we should find on each side a mixture of persons of both races, whereas the truth is that, with exceptions which tend to prove the rule, all the British are on one side, and all the Canadians are on the other. What may be the immediate subject of dispute seems to be of no consequence ; so surely as there is a dispute on any subject, the great bulk of the Canadians and the great bulk of the British appear ranged against each other. In the next place, the mutual dislike of the two classes extends beyond politics into social life, where, with some trifling exceptions again, all intercourse is confined to persons of the same origin. Grown-up persons of a different origin seldom or never meet in private society ; and even the children, when they quarrel, divide themselves into French and English like their parents. In the schools and the streets of Montreal, the real capital of the province, this is commonly the case. The station in life, moreover, of an individual of either race seems to have no influence on his real disposition towards the other race ; high and low, rich and poor, on both sides—the merchant and the porter, the seigneur and the habitant—though they use different language to express themselves, yet exhibit the very same feeling of national jealousy and hatred. Such a sentiment is naturally evinced rather by trifles than by acts of intrinsic importance. There has been no solemn or formal declaration of national hostility, but not a day nor scarcely an hour passes without some petty insult, some provoking language, or even some serious mutual affront, occurring between persons of British and French descent. Lastly, it appears, upon a careful review of the political struggle between those who have termed themselves the loyal party and the popular party, that the subject of dissension has been, not the connexion with England, nor the form of the constitution, nor any of the practical abuses which have affected all classes of the people, but simply such institutions, laws, and customs as are of French origin, which the British have sought to overthrow and the Canadians have struggled to preserve, each class assuming false designa-

Digitized by Google

tions and fighting under false colours—the British professing exclusive loyalty to the Crown of England, and the Canadians pretending to the character of reformers. Nay, I am inclined to think that the true principles and ultimate objects of both parties, taken apart from the question of race, are exactly the reverse of what each of them professes, or, in other words, that the British (always excluding the body of officials) are really desirous of a more responsible Government, while the Canadians would prefer the present form of Government, or even one of a less democratic character. I shall have more to say on this head presently, having mentioned the subject here only for the purpose of citing another fact which tends to prove the existence of a deep-rooted national sentiment on both sides. Such a contradiction between the real and avowed principles of each party could not have occurred if all the people had been of one race, or if every other consideration had not given way to the sentiment of nationality.

This general antipathy of the Canadians towards the British, and of the British towards the Canadians, appears to have been, as it were, provided for at the conquest of the province, and by subsequent measures of the British Government. If Lower Canada had been isolated from other colonies, and so well peopled as to leave little room for emigration from Britain, it might have been right at the conquest to engage for the preservation of French institutions, for the existence of a "Nation Canadienne;" but, considering how certain it was that, sooner or later, the British race would predominate in the country, that engagement seems to have been most unwise. It insured such a strife as has actually taken place; for, notwithstanding the division of Canada into two provinces, for the purpose of isolating the French, the British already predominate in French Canada, not numerically of course, but by means of their superior energy and wealth, and their natural relationship to the powers of Government.

It was long before the Canadians perceived that their nationality was in the course of being over-ridden by a British nationality. When the Constitutional Act bestowed on them a representative system, they were so little conversant with its nature, and so blind to the probable results of British emigration, that they described the constitution as a "machine Anglaise pour nous taxer," and elected to the House of Assembly almost a majority

Digitized by Google

of Englishmen. But with the progress of British intrusion they at length discovered, not only the uses of a representative system, but also that their nationality was in danger; and I have no hesitation in asserting that of late years they have used the representative system for the single purpose of maintaining their nationality against the progressive intrusion of the British race. They have found the British pressing upon them at every turn, in the possession of land, in commerce, in the retail trade, in all kinds of industrious enterprize, in religion, in the whole administration of government, and though they are a stagnant people, easily satisfied and disinclined to exertion, they have naturally resisted an invasion which was so offensive to their national pride.

The British, on the other hand, impeded in the pursuit of all their objects, partly by the ancient and barbarous civil law of the country, and partly by the systematic opposition of the Canadians to the progress of British enterprize, have naturally sought to remove those impediments, and to conquer, without much regard to the means employed, that very mischievous opposition. The actual result should have seemed inevitable. The struggle between the two races, conducted as long as possible according to the forms of the constitution, became too violent to be kept within those bounds. In order to preserve some sort of government, the public revenue was disposed of against the will of the Canadian people represented by their Assembly. The consequent rebellion, although precipitated by the British from an instinctive sense of the danger of allowing the Canadians full time for preparation, could not, perhaps, have been avoided; and the sentiment of national hostility has been aggravated to the uttermost, on both sides, by that excessive inflammation of the passions which always attends upon bloodshed for such a cause, and still more by this unusual circumstance, that the victorious minority suffered extreme fear at the beginning of the contest, and that the now subdued majority had been led to hope everything from an appeal to force.

There seems to me only one modification of this view of the subject. The employment by the Canadians of constitutional and popular means for their national purpose, has taught some of them, consisting chiefly of the most active and able, higher political views than such as

Digitized by Google

belong to the question of nationality. These men are not at heart friendly to the barbarous institutions of their ancestors, but would readily adopt a more enlightened system, if they could do so without losing their own importance. Their necessary dependence on the prejudiced mass has alone restrained them from joining in many of the views for the improvement of the country which are entertained by the British. They have also learned to estimate the practical abuses of Government which affect all classes, and to wish for many reforms without reference to Canadian nationality. They even had, to some extent, succeeded in disseminating their opinions amongst the mass of their countrymen, and they are not unlikely to play a valuable and distinguished part under any new system of government that may put an end to the strife between hostile races; but, unfortunately, their number is so small as scarcely to affect my opinion of the temper of the Canadian people.

Supposing my view of that subject to be correct, your Lordship will readily understand that the bulk of the Canadian people are as disaffected as ever, and that the British part of the population regard the Canadians with vindictive jealousy. The Imperial Government is distrusted by both parties; by the Canadians because they fear, or rather expect in gloomy silence, that advantage will be taken of their late rebellion to remove the very causes of dissension, by giving a British character to the institutions and laws of the province, so that there shall no longer be any serious impediment to British colonization and enterprize; and by the British, on the other hand, because they doubt whether the Imperial Government will ever sufficiently understand the state of parties here, to approve of the great changes which must inevitably take place, if another period of legislative strife, and perhaps another rebellion, are to be averted.

And here I must notice a fact of great importance. The more discerning of the Canadians are perfectly aware that if the authority of the United States should ever extend to this country, whether by means of war or of a peaceful union, the peculiar institutions, and even the language, of French Canada would be extinguished as soon as possible, yet are they willing, with the exception perhaps of a considerable portion of the clergy, to incur the loss of all that they have held most dear, in order to

Digitized by Google

gratify the sentiment of vengeance that has now got possession of them. I would not exaggerate the amount of the sacrifice that they are willing to make for the sake of revenge. It is right to add, therefore, that, in my opinion, they almost despair, come what may, of preserving those ancient usages and that distinct nationality, in defence of which they have struggled so many years.

But be this as it may, whether they are moved by a sentiment of mere vengeance, or by revenge mixed with despair, I am well convinced that an American invasion of this province would be highly acceptable to most of them.

Satisfied of the disaffected temper of the Canadians as a people, I have naturally taken pains to acquire correct information as to the state of feeling in the United States as respects these colonies and the mother country.

All reports concur in assuring me that the present government of the Union, and a vast majority of the American people, are decidedly adverse to a rupture with England. Having already conveyed this assurance to your Lordship, I need not dwell upon it here; but there are points in the state of American feeling towards these colonies, and especially near the frontier, of so much moment as to require particular notice.

In the first place, although some persons in the States, and the more so if they have visited this country, are aware of the true nature of the late rebellion, it is a common opinion in America that the contention in this province has been between the executive government on the one hand, supported by a minority, and the majority of the people, without distinction of race, on the other; and that the subject of disagreement has been, practical grievances and general principles similar to those which formed the matter of dispute between England and her old colonies in America.

As their fathers rebelled in defence of those old English charters of local self-government, which placed local taxation and revenue at the sole disposition of popular assemblies, so they think that the Canadian majority was justified in withholding supplies, and in resisting by force the violation of their constitution by the British Parliament.

They believe, in a word, that the majority in Lower Canada has contended for the maintenance of popular rights, and that arbitrary government is the aim of the minority. The mistake is easily accounted for: it is

Digitized by Google

only on the spot that one learns how the subject of strife in Lower Canada has been a question of nationality; everywhere else the false professions and designations employed by both parties, combined with the plain fact that the contest has been between a majority and a minority, is apt to mislead the inquirer, by keeping out of view the distinction of races. If the whole subject were understood by Americans, they would probably sympathize with those who are of the same origin as themselves, who resemble them in numerous particulars, and who seek objects which, if this country were under American rule, would be unhesitatingly accomplished, as similar objects have been attained in the Dutch colony of New York, and the French colony of Louisiana.

There is no people under the sun to whom the feudal institutions and most defective civil laws of the Canadians would be more intolerable, than to the Anglo-Saxon race of the United States. But they have misunderstood the case. They have fallen into the not uncommon mistake of confounding means with ends. Believing that the means employed by the Canadians, in the Assembly, were constitutional and popular, and seeing that the British, being in a minority, necessarily clung to the local executive and the imperial authority; above all, regardless of the accident (for so it may be termed with respect to the question of nationality) by which the Canadians happen to constitute a majority, Americans have supposed that the objects of both parties in the colony were of the same nature respectively, as the means on which each party has relied. An ever active sentiment of national pride is, perhaps, the most remarkable feature in the American character. It might have been foreseen, therefore, that the Americans, proudly recollecting the origin and progress of their own revolutionary war with England, should sympathize with the Canadians, or rather with the majority, who happen to be Canadians. Whether they may ever comprehend the false position assumed by both parties in this colony, I will not venture to predict; but so long as their view of the subject shall remain unchanged, they will, I believe, continue to sympathize with that side which has the air of contending for democratic principles and popular objects, and to wish that it may prevail over the other, which appears in the light of an oppressive minority.

Digitized by Google

Secondly: Having regard to the national pride of America, it is certain that the temper and tone of the British party towards that country tends to stir up angry passions throughout the Union, and especially near the frontier, where articles from the colonial newspapers are generally reprinted. Hitherto the national pride of America has not been deeply wounded by these means (and I do all in my power to mitigate the national influence of such affronts to it); but I am credibly informed that these unceasing attacks have not been without effect, and that they form a subject of growing irritation.

Thirdly: By the existence of a state of things out of which it is easy to see that war might spring, the American mind becomes more and more familiar with the idea of war. Differing as the Americans do, from all other nations, in the universal diffusion of an active interest in public affairs, and in a habit which belongs to all ranks, of calculation as to the future, they are led, by the political state of these provinces, to discuss the subject of war hypothetically, if I may use the expression; they are reminded of the events of the last war, and one of them in particular, the capture of Washington, which inflicted a deep wound on the national pride, and by frequently conversing on such exciting topics, they gradually approach that state of feeling under which the government, necessarily impelled by the people, would find it hard to maintain friendly relations with England.

Fourthly: It is not to be denied that the distracted state of these colonies occasions no little inconvenience to the frontier states, and to the federal government; it calls for an increase of the army, a sort of military array on the frontier, and the exercise of new powers by the executive, which are opposed to the habits, if not the institutions, of the American people. All the expense and annoyance are attributed to the British Government. A dispassionate American admits that his government is bound, at whatever cost, to prevent aggressions on the Canadian frontier, and he does not deny that the obligation has been inadequately fulfilled;[1] but when reminded of the inefficiency of the laws for that purpose, and the weakness of the American executive, he answers that the

[1] From 1838 to 1840 a series of raids by American filibusters was made on the Canadian frontier, but the conduct of the American Government was throughout correct.

Digitized by Google

true source of every difficulty is the weakness of the British Government in Canada, which has not maintained order amongst its own subjects, nor is able to protect the United States from such a nuisance as arises from the conduct of British refugees within their territory. This retort, without stopping to examine its justice, suffices to show that, until order shall be restored in these colonies, a great cause of irritation in America will probably continue to operate with increasing force.

Fifthly: The boundary question, being much mixed, as it unavoidably is in America, with considerations arising out of the state of these colonies, forms a more active element of hostile feeling than would otherwise have been the case.

Lastly: It is certain that, amongst the frontier population of the United States, which, I should observe, has very greatly increased since the last war, there exists a numerous body of men, young, active, energetic, and self-relying, who, from various motives, long for an opportunity of invading Canada. Some of them are moved by an opinion, which it would not be easy to question, that if these colonies were laid open to American enterprize, a great impulse would be given to the industry and trade of that part of the States which now constitutes the frontier; some are influenced by one or other of the circumstances to which I have already adverted; some by that love of adventure merely which belongs to the American character; and some by a reasonable calculation of the gain and distinction which, in troubled times, usually fall to the most active and daring. The manner in which these people talk of invading the Canadas exemplifies the self-reliance of American citizens. They do not expect that the federal government should open the way for them by military operations; they even avow their belief that, in a contest of troops only, the British would surely prevail; but they reckon upon the friendly disposition towards them of great numbers on this side, and upon swarming over the line in such numbers, and at so many places simultaneously, as to get possession of the country in spite of military obstacles. I do not pretend to weigh such calculations, but state them as they have been reported to me. If I am not misinformed, it is well that I should remind Her Majesty's Government of the invasion of Texas by a body of American citizens, who,

Digitized by Google

without the least aid from their government, have seized an extensive country, defeated armies, got possession of the soil, and established themselves as a nation, with constitutional government, a judicial system and municipal institutions as complete as any in America. There is certainly no immediate danger of such an attack upon these colonies ; and I have mentioned the subject only for the purpose of indicating the probable character of the contest that would take place here, if all the causes now in operation should finally produce one. It was in consequence of all these important considerations that, during my late residence on the American frontier, I courted the most unreserved communication with all respectable Americans, for the purpose of impressing them with a more sound and accurate conception of the real state of things ; with a more just appreciation of our system of government, and its real objects ; and with a due sense of the danger which would arise to themselves, if their government remained a passive spectator of all these proceedings, tending as they did, to destroy all confidence in its executive strength, and all reliance on the national honour.

I am happy to say that my efforts have been successful, that a great change has taken place in public feeling on the American side, and that my exertions to restore tranquillity and good order are encouraged and supported by the most influential portions of the press and of society in the United States.

Except as it has been noticed for the purpose of explaining the temper of the Canadians, and one of the causes of irritation in the United States, a most important subject yet calls for your Lordship's attention ; I allude to certain feelings and views of the British section of Her Majesty's subjects in this province.

Your Lordship is already informed of the general satisfaction expressed by the British party at my having, when I assumed the Government, avoided connecting myself with the old body of officials. It may be supposed that the body in question did not participate in that sentiment. I very soon became aware therefore of the existence of some difference between the official body and the British in general. Subsequent observation has convinced me that, except in their common hostility to the Canadians, there is no sympathy between these two classes.

Digitized by Google

That this should be the case is really not surprising when one discovers how all the powers of Government have been neglected and abused for many years past in this colony. Not to go further back than the commencement of serious differences between the Canadians and British as such; since, when the two branches of the legislature have neglected their proper functions to pursue the contest between races, a long time has passed without anything like beneficial legislation, and not a few of the many evils resulting from this perversion of legislative powers have, by a very natural mistake, been attributed to neglect and corruption in the Executive. At the same time it must be confessed, that the Executive has been both neglectful and corrupt. I need not remind your Lordship of those flagrant instances in which the Imperial Government has been led to interfere for the correction of administrative abuses, nor is this a fit occasion for entering on that subject in detail; but I am bound to add, that the Government of this province, including the administration of justice, has not obtained the respect of the people, and that, according to all my information, there has been ample ground for the distrust and suspicion with which authority is regarded.

This leads to another feature in the disposition of that portion of the British inhabitants which may be termed "independent." Their main object, as I have before explained, has been to remove the obstacles which the ignorance, the apathy, and the ancient prejudices of the Canadians opposed to the progress of British industry and enterprize; to substitute, in short, for Canadian institutions, laws and practices, others of a British character. In this pursuit they have necessarily disregarded the implied, not to say precise, engagement of England to respect the peculiar institutions of French Canada. But the Imperial Government, on the contrary, never quite forgetting that ancient pledge, has rather extended its protection to the Canadians than espoused the cause of the British settlers. It were to be wished, perhaps, that this policy had been consistently pursued from the beginning, as in that case a British community might not have grown up here with feelings, wants, and a degree of power which make it simply impossible to pursue such a policy now. But it has not been consistently pursued. By a variety of measures, and especially by promoting emigra-

Digitized by Google

tion to this colony, the Imperial Government have really undermined the Canadian nationality which they perhaps intended to preserve. A similar contradiction may be observed in their treatment of the national struggle which has ended in civil war. Never taking a decided part with either section in the colony, they have wavered between them, now favouring the one and then the other, but neither decidedly, and finally displeasing both sections in about the same degree. Under such a system, if it may be called one, no governor could have pursued a consistent course, or have attached either the Canadians or the British to the Imperial Government.

I should not permit myself to say this reproachfully, even if there were room for an accusation, which in my humble opinion there is not; but I mention it as a necessary result of the original false step, and for the purpose of explaining the present disposition of the British party. Deeply offended at every measure or decision of the Imperial Government which thwarted their own British or Anti-Canadian views, they are also wanting in that respect for the supreme authority which is sometimes felt by the discontented subjects of a decided and vigorous Government. Restrained (though not entirely) from the public expression of their sentiments by a hope that the Imperial Government may yet accomplish the object on which their heart is set, they have no such reserve amongst themselves, nor do they at all care who knows of the language commonly held by them when speaking of the Imperial Government, and the connexion between this colony and the mother country.

I am assured that the leaders and their followers, one and all, are in the habit of declaring, that rather than be again subject to the French (meaning, rather than see another majority of Canadians in the Assembly), they shall find a way to take care of themselves.

I should be sorry to report any idle conversation upon such a topic, but have no doubt that language of this kind is commonly uttered with an earnestness of manner which should prove its sincerity. And this is not all: for the sentiments expressed are enforced by deliberate arguments, such as that, considering the exasperation of the Canadians produced by late events, there can be no permanent safety for people of British descent except by rendering the colony thoroughly British; and that if the

Digitized by Google

Imperial Government should not provide for the security of its British subjects, the time will soon be past for obedience to any other law than that of self-preservation.

That such views are currently expressed amongst the British party, there can be no doubt; and I am the more disposed to believe them sincerely entertained, because, having reference to a future contingency, they are not inconsistent with those loud professions of loyalty and attachment to England by which the British minority has hitherto sought to enlist the Imperial Government against the Canadian majority. At present, of course, such views are merely speculative, everything being held in suspense by the large powers awarded to me, and by the hope of a happy settlement of affairs upon my recommendation.

Notwithstanding, however, the very unfavourable representations contained in this despatch, I am induced to hope with confidence, that success may ultimately attend the measures with respect to this country which have been recently adopted by the Imperial Government. My principal reason for this assurance is drawn from the good effect already produced by decided and vigorous action. The exercise of the very extensive powers placed in my hands seems to have operated as a sort of charm, like oil poured upon troubled waters. At this moment all is still. A stranger would hardly believe that the country had been recently distracted by civil war. Expectation for the future is, I trust, taking the place of angry passions occasioned by the past. I must, however, conclude by assuring your Lordship, that whatever hopes I entertain of the future, depend altogether on the supposition that Her Majesty's Government and Parliament will not shrink from the adoption of permanent measures of remedy and prevention, proportioned to the greatness of the difficulties with which I have yet to contend, and will sanction such measures as will effectually provide for the abstraction of all legislation on British interests from the control of a French majority. I am of opinion that this great object can be legitimately effected without violence to Canadian rights, and in strict accordance with the soundest principles of constitutional government.

The time is fast approaching when I shall be enabled to bring these measures under the consideration of Her

Digitized by Google

Majesty's Government; and in the meantime I recommend to their serious attention the important points to which I have referred in the present communication.

CASTLE OF ST. LEWIS, QUEBEC,
16 *October*, 1838.

In my despatch (No. 68) which announced my intention of returning to England at an early period, for the purpose of resigning my commissions, I explained the grounds on which I had formed that decision after mature deliberation. I felt that the moral power of my government was so completely destroyed, and the difficulties of my position so greatly augmented by the proceedings of Her Majesty's Ministers and the Imperial Parliament, that the attempt to conduct the government of these provinces on better principles than those which have hitherto been adopted was one which must be made by other hands than mine.[1] I grieve to find that I did not by any means exaggerate the probable effect which would be produced on the public mind on this continent by the occurrences in England. In the course of one week I have found the tone of the British inhabitants change from the loudest professions of loyalty and attachment to the connexion with the mother country to a calm anticipation and discussion of the chances and consequences of separation.

[1] By an Ordinance of his Special Council, dated June 28, 1838, Lord Durham had proclaimed a general amnesty. From this eight rebel prisoners were excepted by name, and without trial deported to the Bermudas; certain others were banished. For this and other autocratic acts, he was fiercely attacked in the House of Lords by Lord Brougham and the Tories, and very feebly defended by Lord Glenelg and Lord Melbourne. In the House of Commons Lord John Russell came to his defence, but on August 10 Lord Melbourne, the Prime Minister, announced the disallowance of the Ordinance. On September 25 Durham received news of this from an American newspaper, and at once forwarded his resignation, without waiting for the official confirmation, which came a few days later. On October 9 he issued a proclamation, in which he practically appealed from the Home Government to the Canadian people, recounting the history of his mission, and announcing the fate of the Ordinance and his own resignation, of which he had spoken freely since September 25. So fiery was the tone of the proclamation that the Colonial Office recalled him, regardless of the fact that they had already received his resignation; but before the despatch reached Quebec he had sailed for home, leaving the administration in the hands of the Commander-in-Chief, Sir John Colborne.

Digitized by Google

From the same mouths that a short while ago expressed the most passionate resentment of wrongs supposed to have been received from the people of the United States, I hear significant approval of the course which I have all along taken to conciliate the good-will of a kindred people, whose sympathies with the English race it is judged politic to cultivate. I have been startled at the rapid growth of this dangerous state of mind; and when the mass of the British population of this city were assembled to present me with an address, expressive of the kindest feeling towards myself, and the strongest condemnation of the policy which severs the official connexion between us, I shrunk from any other than a formal and deliberate expression of my feelings, from fear lest an indiscreet word or gesture on my part, or any one of those unforeseen accidents which carry large popular assemblies beyond the influence of human control, might lead to a general expression of the angry feeling that pervaded the excited numbers whom I beheld before me.

A perfectly different feeling exhibited itself at first among the French Canadians. They naturally exulted in the victory which appeared to have been gained by those who put themselves forward as their especial advocates in the mother country, and the disaffected rejoiced at perceiving that the arm of authority was weakened. Since the receipt of the first news from home which might lead them to believe, on high authority, that I did not really possess the powers with which they once imagined me to be invested, I can have no doubt that the disposition to secret machinations and preparations for insurrection, which had been for some time checked, has sprung into renewed activity; and though I do not feel much dread at the prospect of any unsupported attempts which the French population may make against the military force now in this country, I cannot doubt that there is now in existence an organization of the disaffected in this province, which may lend a most pernicious aid to any attack which may be made from without.

I have already forwarded to your Lordship an address expressive of the feelings of the delegates from the lower provinces of British North America; and the accounts which I have recently had show that the same feelings have been generally expressed in those provinces in the calm manner in which their happy immunity from actual

Digitized by Google

civil war enables their inhabitants still to express their political sentiments; but throughout Upper Canada, where the memory of recent suffering is fresh and vivid, and where the terror of near and visible peril constantly alarms the public mind, a more passionate and general feeling of regret and alarm has pervaded all classes. Unaccustomed to the state of feeling generated by actual insurrection, I have been struck by the extent of that terror with which all parties and all classes see, in the disturbance of my policy, the harbinger of a winter similar in its political character to the last. The sudden unanimity of all parties in that most divided province has been as alarming as extraordinary; for when those in power, and those who in attempting to snatch it from them advanced to the brink of rebellion, signed the same address,—when the leaders of the reformers seconded the resolutions moved by the heads of the family compact,—I could not but infer that an unanimity so strange must have been produced by the indication of sure and awful peril.

Of what nature that danger is, the enclosed communications from Her Majesty's Ministers at Washington will inform your Lordship. I grieve to say, that all the information which I have received within these few days, from all quarters, confirms the alarming intelligence conveyed therein. I have no doubt that the numbers, means and projects of the conspirators are greatly exaggerated, but I have little doubt also, that there is a great reason to apprehend that there has been suddenly formed throughout the bordering states, among a population capable of such enterprises, a widely ramified conspiracy, bent on repeating in Canada the scenes of Texas, invading the British dominions with a horde of those lawless and daring adventurers, who are to be tempted by the promise of sharing in the plunder of private and public property in these ample and fertile provinces.

It is of great importance that your Lordship and your colleagues should know the present state of feeling, both in these provinces and in the neighbouring states, and that you should know it betimes. I take, therefore, the opportunity which is afforded me by the postponement of the *Royal William's* departure, to supply you, though in a hurried manner, with the information which has reached me.

Digitized by Google

The mind of the British population throughout all the provinces has been deeply agitated by the prospect of a new change in the system of government. I am happy to be able to adduce the great number and the kind language of the addresses which I have received from all parts of the two Canadas, as proofs of the favourable feelings with which my policy has been regarded. Your Lordship must not imagine that I attach undue importance to documents so flattering to myself; for I feel that these are expressions of a deeper and more serious feeling than any that regards my individual conduct or treatment. The expressions of regret at my resignation, and of condemnation of the disallowance of my ordinance, proceed from those who disapproved of that part of my policy, just as much as from those who had most warmly supported it. The measures which I had adopted with a view to the disposal of the political prisoners had been a long time in operation; and however freely they had been canvassed,—however much a certain portion of the population had thought it right to censure them,—that discussion had run its course, and all had acquiesced in a policy which they judged to be definitely adopted. The disturbance of this settled policy by the acts of the home Government has been regretted and condemned, not more by those who most cordially approved of the particular course adopted by me, than by those who originally wished that I had acted with greater severity. Both equally condemn the precipitate interference, which has obviously been undertaken in utter ignorance of the state of these provinces. They see with dismay that the difficulties which my policy had succeeded in removing are again placed in the way of the Government; that the authority from which they expected at least vigour and steadiness is powerless to enforce its determinations and to maintain the course on which it has entered; and that these unhappy provinces are, during the trying emergencies which are generally anticipated, to be still subtected to the mischievous influence of that wavering and temporizing policy which has hitherto paralysed the efforts of their energetic and loyal inhabitants.

Your Lordship will not be surprised to learn that regret is not the only feeling that has in consequence pervaded the British portion of the population, and that they have not beheld without anger their dearest interests thus

Digitized by Google

made, as they express it, the sport of parties at home, who do not participate in either the danger or the desire to avert it. I have warned your Lordship, that the patience and the loyalty of our countrymen in these provinces may be tried overmuch; I have not been surprised, therefore, that their despair at the failure of that support which they had justly expected from home, has led them to think on what they can do for themselves; but I do assure your Lordship that I was not prepared for the extent of the change which I cannot doubt that these events have produced in the public mind here.

I am compelled abruptly to close this despatch, of the means of forwarding which, I received a very short notice.

CASTLE OF ST. LEWIS, QUEBEC,
20 *October*, 1838.

MY LORD,

Since my despatch (No. 84) which I forwarded to your Lordship on the 16th inst., I have seen Sir John Colborne, and had the advantage of a good deal of communication with him on the present state of affairs. His information respecting the probability of serious disturbances during the ensuing winter, I am sorry to say, tallies very exactly with that which I have received from all quarters; and his opinion of the gloomy aspect of affairs is just as strong as that which I have lately endeavoured to impress on your Lordship. I am happy to say that the most perfect understanding continues to prevail between us. Looking on him as the person with whom the whole conduct and responsibility of the Government during the next six months will in all probability rest, I have thought it best for the public service that he should enter as speedily as possible on that course, by which he purposes to maintain the tranquillity and the possession of these provinces. I have requested him at once to take whatever military precautions he may deem necessary for enabling him to carry out his own views for the security of the provinces, against foreign invasion, or internal disaffection. He has readily availed himself of this offer, and is busily engaged in taking steps for calling out the volunteers and guarding the frontiers. The indications of mischief are so numerous and so urgent, that it is no longer possible to conceal, or advisable to

Digitized by Google

attempt concealing, the consciousness of danger entertained by the Government: its only course is openly and resolutely to proclaim and avert that danger. The early adoption of these measures of military precaution must of necessity entail great expense on the Government. It will too clearly demonstrate to the province and to neighbouring states the melancholy condition of its internal and external relations; and it will in all probability produce a state of things in which the present exasperation of parties will be aggravated by fresh causes of irritation; but these are evils which must be borne, if we mean to provide, as far as is in our power, for the retention of the two Canadas. While, therefore, I cannot but lament the necessity of them, I must approve the adoption, under existing circumstances, of these measures by the Commander of the Forces.

The result of my communication with Sir John Colborne, as well as of fresh intelligence which I have received, has been a confirmation of the propriety of my relinquishing the government of these provinces. It is quite clear that at the present season it is useless for the Government to occupy itself with any schemes of extensive and permanent amelioration. The sole object of its care must for the present be the retention of the province during the winter. As this must be attained by military means, the business of my pacific mission is, if not at an end, in abeyance; and it is best that for a while the civil and military authority of this province should be in the same hands. A civil governor here would, during the next six months, have no legitimate business, save that of rendering that subordinate aid to the military authorities which will be better secured if the entire direction and responsibility be allowed to rest with the Commander of the Forces; and this is also Sir John Colborne's view of the case. My only sphere of utility to these colonies must, I am more than ever convinced, be henceforth in the Imperial Parliament, where, if I can force on the knowledge of my countrymen the true state of these provinces, and the true policy to be adopted for their future good government, I may contribute towards rendering available the last opportunity which I believe will ever be afforded to Great Britain of maintaining an useful and honourable connexion with her possessions on the North American Continent.

Digitized by Google

With this object in view, I think it my duty to return without any delay. I have therefore, with great regret, on public as well as private grounds, abandoned my intention of visiting the United States, where I hoped that my communications with the President might be of service. I now intend to sail from this port in Her Majesty's ship *Inconstant*, direct to England, on the 3d of November.

The nature and extent of the danger with which Sir John Colborne will probably have to contend, I endeavoured to point out to your Lordship in my despatch (No. 84), which I prepared at a few hours' notice, availing myself of the postponed departure of the *Royal William*. Time and deliberation have not enabled me to supply your Lordship with more precise information on the points on which I then touched, for the fresh intelligence which every day brings is of the same vague nature, and confirms our belief in the existence of unknown perils, without informing us as to the time, the mode, and the extent to which we are to be exposed to them.

There is great danger to be apprehended from the rapidly increasing familiarity with which the idea of separation from the British empire is expressed and canvassed by the British in these provinces. I do not mean to disparage their severely tried and well proved loyalty to the Crown and attachment to the British empire. Their preference of monarchical institutions, their affection for the mother country, are as strong as ever; but their hope of maintaining either has been suddenly and materially weakened; and in this state of feeling they naturally look with great anxiety to the form of government under which it is possible they may soon have to live, and to the connexions which they may be under the necessity of forming when the ties of their present dependence are severed. The chances and the desirableness of the different possible results are daily canvassed among them; their minds become familiarized with the thoughts, which a short time ago they held it a crime to entertain; and however favourable the decision of their judgment may be, the strong feeling which bound them to the British empire is weakened by the mere fact of its soundness becoming a matter of question.

To what extent this feeling prevails, or how soon and in what form it may exhibit itself, it is impossible to say.

Digitized by Google

It is one of no recent growth. Do not imagine, my Lord, that it owes its origin to my recall, or that it could be obviated by my retention of the government. Long lurking in the minds of even those inhabitants of these provinces in whom it had not been openly manifested in the course of the late discontents and disturbances, it was in great measure removed by the apparent indications of a better policy, which were hailed in the appointment of a Governor armed with the extensive and sufficient powers which I was supposed to wield when I landed on these shores. This feeling has sprung into sudden and rapid growth from the hour in which the public mind was disabused as to the extent of my previously exaggerated powers by the weightiest authority in the British legislature, which deprived me of moral influence by asserting without contradiction, that I "possessed only the ordinary legal powers of a common Governor." From the same moment and from the same cause sprang the other feelings of which the wide diffusion among perfectly different classes menaces even greater danger.

The same cause called into renewed and vigorous action the hopes of the disaffected in both provinces. Of the designs of the disaffected within the Upper Province we know nothing. In this, the indications of conspiracy and dangerous designs are numerous and undeniable. A formidable organization bound together by secret oaths and secret signs, undoubtedly exists, and extends over the French population, at least of the district of Montreal. The object of the oath does not appear to be specific; it merely binds the conspirators to be ready to obey whatever orders they may at any time receive from their chiefs. When this machinery is to be called into action does not appear. I am, on the whole, inclined to be of opinion, that there is no intention of immediate outbreak in this province, unless in case of invasion from without; to that it is at all times ready to serve as a formidable auxiliary; but in the meantime it produces all the alarm which actual insurrection would occasion.[1] Terrified by signs of this formidable and mysterious organization, and sometimes by secret menaces or warnings of murder and massacre, the loyal inhabitants of the country quit their exposed and isolated habitations, and either at first seek

[1] On Durham's departure a second rebellion broke out, which was sternly repressed by Sir John Colborne. (Kingsford, *op. cit.*, x. 90.)

Digitized by Google

refuge in the towns, or at once secure their safety by quitting the British dominions. In both provinces alike this emigration, from utter insecurity of person and property, has taken place to an alarming extent; and both provinces have thus been, to a great extent, deprived of the most valuable class of their inhabitants, of those whose peaceful energies contribute most to their improvement, and who most demand and deserve the steady protection of a parental government.

The same cause has given life to the worst spirit among the bordering population of the United States, and extended, if not created, that formidable secret combination, of which the existence has been announced to me, not only by a host of concurrent and consistent private communications, but by the most solemn warning which the government of the United States could give.

I do not believe that this conspiracy is the result of that somewhat generous, but utterly misdirected, sympathy which last winter prompted our republican neighbours to interfere in behalf of a people whom they erroneously imagined to be making a hearty struggle for liberty. It seems rather to result from the aspect of the weakness of the Government in these provinces, which has latterly been presented to the bordering population, and which offers to the ambition or avarice of the bold and lawless settlers of the American wilderness the ample and fertile lands which appear to invite occupation by the strongest. They think to repeat the conquest of Texas from a nobler foe, with proportionably greater means of aggression; and if they know that they will have to contend with something more than a Mexican army, they count on an internal aid, which was not found in the solitary wilds of Texas.

That this is the nature of their views and plans I infer, not merely from the direct information which I have received, but from the fact that the first indications of these machinations were observed just at the period in which the first debates in the House of Lords convinced the ill-intentioned here, that they need not apprehend a vigorous and well-supported government in Canada.

Such are the internal and external prospects of a country, respecting which, in my despatch of the 9th of August, I thus expressed myself:—"The exercise of the very extensive powers placed in my hands seems to have

Digitized by Google

operated as a sort of charm, like oil poured on troubled waters. At this moment all is still; a stranger would hardly believe that the country had been recently distracted by civil war. Expectation for the future is, I trust, taking the place of angry passions occasioned by the past."

This was, at that time, a true description; I stated nothing but what correctly described the state of things in these provinces. I could not know that at that very hour events were passing at the other side of the Atlantic which would call into renewed and fearful activity the smothered embers of universal strife, and reverse the fair order of things which I had so diligently laboured to establish.

HER MAJESTY'S SHIP *INCONSTANT*,
AT SEA, 10 *November*, 1838.

MY LORD,

I have the honour to inform your Lordship that I had, on the morning of my departure for Quebec, an interview with Mr. Sheriff M'Donnell, who had arrived the night before from Kingston, Upper Canada, for the purpose of communicating to the government the alarming intelligence of the existence of a great unwillingness on the part of the militia and volunteers of Upper Canada to tender their active services.

Mr. M'Donnell informed me that the belief amongst them of the indifference of the British Government to their fate was so general, that they deemed it useless to make any exertions to maintain the connexion with the mother country. He also said that nothing but a declaration from me, of the intentions of the British Government having been misunderstood, would induce them to enrol themselves for the defence of the province this winter. I had no hesitation in assuring him that no trace of that indifference would be found in the measures adopted, or the precautions taken by the government over which I presided, and that I could not imagine the existence of a different feeling in the minds of the British Ministers.

I trusted, therefore, that the same alacrity as was before manifested would be evinced by all classes in the Upper province, in coming forward for the maintenance of the public security.

Digitized by Google

Mr. M'Donnell stated himself to be perfectly satisfied with my declaration, and was to return to Kingston the same evening.

I regret to state, with reference to this subject, that the feelings expressed by Mr. M'Donnell are also very generally entertained by the British population in Lower Canada.

I have, &c.
(signed) DURHAM.

Lord Durham's Report on the affairs of British North America was published early in February, 1839.[1] Much of it was naturally displeasing to the dominant party in the colonies, and both in Upper Canada and in Nova Scotia protests were made by the Legislative Council. In the former a select committee drew up a report on the Report, which was unanimously adopted by the Council, and in which their point of view is expressed with much force.

REPORT.

THE SELECT COMMITTEE to whom was referred the Report of the Right Honourable the EARL OF DURHAM, HER MAJESTY'S late GOVERNOR-IN-CHIEF of British North America,

RESPECTFULLY SUBMIT THE FOLLOWING REPORT:

In discussing the report of Her Majesty's late High Commissioner on the affairs of Upper Canada, your Committee are fully aware, that their observations cannot be understood by your Honourable House, as conveying any censure on Her Majesty's Commissioner; who commences by informing Her Majesty, that his information, respecting the state of Upper Canada, had not been acquired in

[1] As originally presented to Her Majesty, the Report was in folio, with four extremely valuable volumes of appendices. In the same year unofficial octavo reprints appeared in London and in Canada, without the appendices, but containing copies of his lordship's despatches to Lord Glenelg from May 31 to November 10, 1838. In 1902 the Report was reprinted at London (Methuen and Co).

Digitized by Google

the course of his actual administration of the government of that Province, a fact to which the report itself bears ample testimony.[1] His Lordship observes that, "it is very difficult to make out from the avowals of parties, the real objects of their struggles, and still less easy is it to discover any cause of such importance, as would account for its uniting any large mass of the people in an attempt to overthrow, by forcible means, the existing form of government."—From the first part of this paragraph it appears, that the political parties into which the Province is said to be divided, have no very strong ground for complaint, otherwise some definite description thereof would doubtless have been given to his Lordship; who, in the latter part of the same paragraph, insinuates, that a large mass of the people of Upper Canada were desirous of overthrowing the government, a fact totally unknown in this Province, and already sufficiently refuted by the conduct of the people. His Lordship then informs Her Majesty, that Upper Canada "has long been entirely governed by a party commonly designated through the Province as the 'family compact,'" and that, "there is in truth, very little of family connection among the persons thus united." Why then should his Lordship give his assistance in the dissemination of any such erroneous idea, as that title has been used to propagate? His Lordship does not appear to have understood, that the object of the Press in adopting the term of "family compact," as a name by which to designate "the Bench, the Magistracy, the holders of the high offices of the Episcopal Church, and a great part of the legal profession, the possessors of nearly the whole of the waste lands of the Province, the people all powerful in the chartered Banks, and sharing among themselves almost exclusively all offices of trust and profit"; intended to impress their readers with the idea, that a close family connection did exist among all the persons in authority throughout the Province, and that if it were not so understood the force of the epithet would be altogether lost; for throughout his Lordship's report "the family compact" is blazoned forth with studious perti-

[1] That part of the Report dealing with Upper Canada is its least valuable portion. In its preparation Durham seems to have relied mainly on Charles Buller. (See Bradshaw, *Self-government in Canada*, p. 247.)

Digitized by Google

nacity, although the inaptness of the title had been previously admitted.

The High Commissioner next endeavours to show, that all persons of education, and more especially members of the learned professions, ought rather to settle in the United States than in Canada, a Surgeon, for instance, because he must show that he is duly qualified before he can be permitted to practise within this Province; an Attorney, because he is not permitted to practise therein as a Barrister; and a Barrister, because he is not allowed to act as an Attorney.

Your Committee are of opinion, that in all these regulations the legislature has shown a proper and praiseworthy desire to prevent ignorant pretenders to medical and legal knowledge, disturbing the animal economy or social condition of Her Majesty's subjects. Then comes his Lordship's list of British grievances, which is altogether remarkable; he complains of the Banking system, in which he says the Canadian party are supreme, (a large portion of the stock in the most ancient of the chartered Banks is, however, owned by persons residing in England,) and further asserts, that the influence of the Banks "is said to be employed directly as an instrument for upholding the political supremacy of the party" (Canadian)—Your Committee happen to have the means of personally knowing, that the chartered Banks have most studiously avoided political connection with all parties.[1]

Your Committee find introduced as one of the grievances, "that under the system of selling land pursued by the government, an individual does not receive a patent for his land, until he has paid the whole of his purchase money."—Why should a contrary course be pursued?—That is not shown! The High Commissioner then wanders into Illinois, and gives a vivid description of the peculiar advantages to be derived by English folk, who may become domiciled in the republic. If indeed his Lordship had not qualified his opinions with the assertion that, "but few cases in which the departure of an Englishman from Upper Canada to the States, can be traced directly to any of these circumstances in particular," alluding to the British grievances before mentioned, your Committee would have supposed that the

[1] Consult thereon Shortt, *Early History of Canadian Banking*.

Digitized by Google

peculiar functions of Her Majesty's High Commissioner were not those detailed in his commission, the more especially, as these hitherto unheard of grievances are quoted as the cause of the decreased immigration from the Parent State ; and throughout the report comparisons are constantly drawn unfavourable to Her Majesty's possessions in North America.

Your Committee having exposed a few of the inconsistencies in the first pages of his Lordship's report, deem it unnecessary to enter more fully into its details, the conflicting character of which, as compared with his Lordship's other productions, is sufficiently set forth in the report of the Committee on the state of the Province, appointed by the House of Assembly : observing, however, that his Lordship sums up the Upper Canadian grievances, in the great practical question of the Clergy Reserves. Your Honourable House has, so recently, had this question under discussion, that your Committee refrain from any commentary on his Lordship's statements regarding it, but your Committee cannot avoid observing, that however unintentional, his Lordship's remarks are evidently calculated to cast odium on the Established Church of England, which, like every other respectable body throughout the colony, has been constantly assailed by the party mis-named Reformers.

Adverting, now, to his Lordship's great panacea for all political disorders, " Responsible Government," your Committee beg to observe, that a liberal minded Englishman, sincerely admiring the great principles of the British Constitution, would naturally be desirous of extending them, theoretically and practically, to all people living under the dominion of the Crown ; and at the first view, would be apt to ascribe any evils which were found to exist in any portion of the Empire, to the absence of those political institutions, which he is bound to uphold in the administration of public affairs, in the metropolitan and supreme government.

It is in this manner we must account for the adoption, at first sight, by many statesmen, of the principle, that the officers administering the government should be under the same popular control in colonies, as the like persons necessarily are in those societies, where powers of supreme legislation, by means of popular administration, are found to exist ; but it is to the practical

Digitized by Google

impossibility of preserving colonial relations on such a plan, that we must attribute the fact, that notwithstanding all the changes produced by the struggles of party, or the alternations of conservative or liberal politics in England, no statesman, armed with the authority, has, as yet, attempted to introduce the principle of responsibility of government to the people, into the colonial system.

After an attentive and disinterested consideration of this subject, your Committee are led to the conclusion, that the adoption of the plan proposed by the Earl of Durham, in which this is the prominent feature, must lead to the overthrow of the great colonial empire of England.

The control exercised by the popular will, over the administration of affairs in Great Britain, and over the choice of persons by whom the government shall be conducted, is founded, not upon theory, but upon the practical necessity of carrying on a government according to the will of that power in the constitution, which, right or wrong, can most effectually control it. Simple responsibility of the executive functionaries, and their liability to answer for misdemeanors or mistakes, existed in England long before the popular branch of the legislature assumed its present powers; and in fact, the trial and punishment of ministers, or in other words, their actual responsibility was much more frequently exhibited when the Sovereign was independent of the people, than since the British constitution has been, by the necessities of the Crown, moulded into its present form.

This latter responsibility the colonists have: it is now proposed to bestow on them the former.

No one can be blind to the fact, that it is amongst those who advocate the doctrine, that colonies are useless and burdensome, that responsibility of the government to the people finds its warmest supporters. Lord Durham holds a contrary opinion, and yet he advocates popular government!

That the colonial possessions of England are of immense importance, and essential to the continuance of her greatness and prosperity, few, we believe, are prepared to deny. In support of that opinion, your Committee will, however, quote a favourite expression of the

Digitized by Google

Earl of Durham, after his lordship had seen the Canadian possessions of the Crown, and become sensible of their value—"England, if she lose her North American colonies, must sink into a second-rate power."

According to the present system, the governor of a colony exercises most of the royal functions, under the general direction of the ministers of the crown; he is strictly accountable for his conduct, and for the use he makes of the royal authority—he recommends for office persons in the colony, or appoints those selected by the minister: and he endeavours to conduct his government according to the policy of the imperial cabinet, with a view to the present prosperity and future greatness of a country in which England has a deep interest; and above all things, with the intention of preserving, against all opposition, the unity of the empire.

To enable him to fulfil these great duties, it is obviously his interest, and that of his advisers, to keep on his side the popular voice of the colony, and to avoid giving occasion to discontent—redressing real, and dissipating, by temperate discussion, all imaginary grievances.

According to the system proposed by the Earl of Durham, the advisers of the Lieutenant Governor would not be officers who, in accordance with the policy of the home government, endeavour to aid the Lieutenant Governor in conciliating the affections of the people; but they must be the creatures of the prevailing faction or party in the Assembly—advising the Governor altogether with the view to the wishes of the House for the moment, regardless of the opinions of the supreme parliament, or those of the imperial cabinet—and having (though nominally subordinate) the power of forcing all their measures upon the Governor.

The colonial Governor must, in this case, be left without discretion or responsibility, and follow whatever changes may occur; in his colony he could take no directions from the minister of the crown, nor, indeed, communicate with the supreme government, unless in the terms dictated by his responsible advisers, to whose directions he must submit, far more completely than the Sovereign to the advice of the cabinet. The real Sovereign, and the supreme cabinet, are lost sight of and forgotten, in the administration of public affairs in the colony: and thus the responsibility to Parliament, which

Digitized by Google

in England is produced by, and consistent with the powers of supreme legislation, being introduced into a colony where the supremacy in the legislative body does not exist, the weaker body, in fact, is, by a political fiction, made the stronger.—The dependency of the colony is at an end; and while the Sovereign no longer possesses a confidential servant in the colony, the ministers of the crown, who are responsible for the preservation of colonial connection, lose all authority to fulfil the duties of their office.

Either this must be the course pursued by a Governor, with responsible advisers, or he must think for himself, independently of those advisers: and, as a matter of course, throw himself for information and advice, upon irregular and unknown sources. In such an event, the responsible advisers resign—they have, perhaps, a majority in the Provincial Parliament; but they may, notwithstanding, be very wrong. Then comes a dissolution of the Provincial Parliament, and, perhaps, an expression of public opinion, by a bare majority, against the government—and probably, inimical to the interests of the empire. Who, then, is to yield?—The government must, in fact, retire from the contest, whether right or wrong, or carry on public affairs without any advisers or public officers.

This cannot be done: so that, after all, the governor of the colony must be responsible to the prevailing party in the colony; and, so far as the empire is concerned, he becomes the sovereign of an independent realm—having no discretion, and therefore no responsibility.

Under such a system, colonial dependence would practically be at an end. If it be resolved, then, to force upon us an independence not yet courted, why subject the colonies to the few miserable years of transition from monarchy to democracy, which must inevitably follow? Why subject the colony to the dissensions of party? Is it to foster a spirit of undying enmity among a people disposed to dwell together in harmony and peace? Far better would it be to unite them at once to an empire which, though rival, and perhaps inimical to England, would, in such case, interfere sufficiently between contending parties, to save them from each other.

If England withdraw her influence, and leave her governors to be the shuttle between colonial parties, no

Digitized by Google

loyalty now existing among any of these parties, will prevent their seeking another influence in the neighbouring republic, to replace the one needlessly withdrawn; and as the French of Lower Canada sought the alliance of their ancient enemies, the Anglo-American population of the neighbouring States, to give them the means of overwhelming the British population—for the time left without the countenance or support of the British government—so will the losing party, in either colony, seek some external influence to aid their cause. England refuses the umpirage, and there can be no doubt but that it will be readily offered, before many years, to the United States.

Ireland and Scotland had once independent legislatures; but never, when under the British crown, had they anything approaching to governments responsible to their respective people—yet the government of them became impracticable, the moment it approached to a participation of equal political rights, and they were united with England: because government in the different parts of an empire, must be conducted with a view to some supreme ruling power, which is not practicable with several separate and independent legislatures.

The plan of the Earl of Durham is to confine the functions of the local legislatures to affairs strictly colonial, but this limitation of powers is not practicable under his Lordship's system.

It is perfectly true that it is not for the interest of England to maintain a continual struggle with the local legislature, for the purpose of upholding any class of persons in the colonies, as the servants of the Crown; but it is no less true, that the honour and interests of the Empire are intimately involved with local administration, and that if Governors of colonies are to be left unsupported by the Imperial Government, and to have their advisers chosen for them by the prevailing party, the usefulness of the Governors must be at an end,—there must either be continual collision between them and the other public servants in the colonies, or the Governors must yield up their judgments and consciences to the keeping of the factions which agitate the countries they are appointed to govern.

In small communities, the future is continually sacri-

Digitized by Google

ficed to present convenience, but the very temporary nature of the interests which influence the politics of a country like this, with a changing population, with no barriers between the inception of public will and its expression—the comparatively little personal influence held by any, from considerations of property, or personal attachment—the ephemeral character of the topics which sway elections and elevate men for the moment into public favour, with almost a certainty of sinking with the reflux of the wave which lifted them into view, operate against the growing up of that steady influence capable of giving stability to politics, or of defining the views of party. The people are individually essentially free—free from landlords—free from employers—free from the influence of great wealth, as well as from that of high station in the few; every man does as it seems best in his own eyes. The consequence is, that it is scarcely possible to know, for any continuance, what the views of the prominent parliamentary men are, except on a few questions: no considerable number of them think alike, and all, by turns, find themselves in a minority many times during a parliamentary session.

This state of things does not arise from any modification of political institutions, but from the individual independence of the population—caused by the ease with which landed property is acquired. In England, political leaders think for the people: in America, the people think for the members of Parliament; and as the people is not bound to consistency, like individuals of note, its appetite for change, and for the proposal and attempt to carry absurd and extravagant measures, is, and must be gratified from time to time, "non obstante" the consistency of politicians.

The same course of politics is found in the United States, where the President, the Senate, and the House of Representatives constantly find their measures negatived by each other, and where members are constantly instructed by their constituents, according to the popular whim of the hour. We therefore do not find what is strictly called Executive responsibility, or necessity of continual accordance of government with the popular voice; and measures have, even between the short intervals of the Presidential elections, time to be popular and unpopular, two or three times over. The French

Digitized by Google

Canadian party form, perhaps, the only political combination in America with consistency of principle, and this is because they have leaders who direct the general opinion. They are consequently the only party whose representatives could by any possibility lay down any tangible principles upon which they would conduct a government. In this Province, as in the United States, popular will must influence the conduct of government in all things not essentially wrong or chimerical, and in these the government must be strong enough to resist, and be known to have the power of resistance for a sufficient time, to permit more cool and quiet consideration on the part of the constituency.

A curious example of this species of legislation is found in a discussion, which has occupied a great part of the present session, on the absorbing topic of the Clergy Reserves. It has been taken up and discussed upon principles of liberality and concession, on all sides; the parties, unable to agree upon any mode of appropriation, have, as a final measure, referred the issue to the Imperial Parliament.

It would be almost impossible to enumerate the various modes of distribution proposed, with and without the approbation of government, on this question, which would undoubtedly, in English politics, be considered one, upon which the existence of a ministry must depend. Suffice it to say that, almost every member had a plan of his own; some had two or three plans fresh from their constituents—yet, strange to say, the house could not agree,—that is to say, there was a number sufficient to negative every plan proposed, and to prevent the reference of the matter to England, up to the last day of the session.

In this paradoxical state of affairs, which of the contending parties should form the colonial cabinet?

This, or something approaching to it, not being an unusual condition of politics, it may easily be supposed that few, if any persons, possess sufficient influence to conduct affairs; and from this state of things, it is to be presumed, has arisen the practice in all colonial governments with legislatures, of the governors standing as mediators between parties, yielding and leaning to the popular voice, but resisting it with the authority of their office, when it was manifestly in error.

Digitized by Google

It must be supposed that had the system proposed by the Earl of Durham been long since adopted, the popular will would have prevailed to a far greater extent than heretofore, and yet most of the practical evils found in the colonies have arisen from measures popular at the time of their enactment.

The preservation of the French language, laws, and institutions, and the consequent perpetuation of the contest between the races, so strongly deprecated by the Earl of Durham, was a popular measure, and must have prevailed even more injuriously, and even destructively, under a responsible government.

The concessions of public lands to U. E. Loyalists and their children, to militia, and other grantees not resident upon the lands, which now form an acknowledged public grievance, were popular measures: the persons who benefited by them being the population of the country, and those who complain of them not being yet arrived.

The parliamentary grants for local works, and the disposal of funds by commissioners named by the legislature, and the abuse of this patronage, are evidently founded upon, and rising out of, the parliamentary influence sought to be made supreme, and are evils which might have been greatly exaggerated, but could not have been lessened by responsible Government.—In fact they prove that governors should oftener take the responsibility of resisting the popular voice than they have been hitherto accustomed.

The very change in political sentiments, produced by the constant introduction of new population from Great Britain, shows that legislation in these colonies ought to be conducted with some view to the interests of those not represented in the legislature, but who may soon form the great mass of the subjects of the Crown in America. A responsible cabinet must, however, look exclusively to the party of the day, and in its favour neglect the great future interests of the Province.

In short, local and sectional interests are felt too strongly and directly in elective bodies, in small communities, to permit of consistent legislation on general principles, and the objects to be gained during the short period for which the majority hold their influence, are of too much consequence, compared with distinct general

Digitized by Google

results, to permit of the perfectly unchecked course which would result from responsible government.

Although the points are few in which it is the interest of England directly to interfere with local and internal affairs in the colonies, your Committee are at a loss to conceive how, in a government so independent as this is proposed to be made of England, these few points can by any means be excluded from the controul of the local parliament—a disagreement with the cabinet and legislature on the subject of foreign trade, immigration, disposal of lands, or any of the excluded topics, will just as readily induce a stoppage of the supplies, with all the consequences, as any of the questions within the range of local legislature, and if we can suppose cases in which the interests of the empire and that of the colony should be different, it is vain to expect that any set of public servants who should espouse the general interests could continue in authority.

Even in the question of peace and war, excluded alike from local legislation in the several states of America, as in the colonies, we have seen how nearly in the states of Michigan, New York, and Maine, the prevalence of popular opinion produced a terrible national war: how the arm of government was paralysed, and the licentious and outrageous conduct of the populace encouraged by local authorities, because of the influence of this excluded and forbidden question upon the elections of local governors and local legislatures:—and it cannot be questioned that little more exacerbation of the public mind in Upper Canada, would have caused such a desire for reprisal and retaliation, as would have placed any local responsible cabinet, desirous to maintain peace on the border, in direct collision with the popular voice.

A stronger instance of the necessity for interference in local affairs than the recommendation of the British Government for a merciful course towards the prisoners presented, could scarcely have occurred, for it has justly been observed, that the honour of England would suffer, if life were taken unnecessarily. But to prevent its being taken to a much greater extent than has been permitted, required much firmness in the advisers of the government, and much reliance on their part on the Imperial authorities for support in the humane course recommended by them.

Digitized by Google

To conclude this subject, your Committee would observe, that so long as England holds sway in the colonies, there will be a majority seeking for power in the Provinces; and a minority for justice and protection, and impartial government. The moment the provincial magnates are made supreme by the proposed system, interference to do justice will be a breach of faith; and let it be recollected, that if England refuse the umpirage between contending parties, there is a power at hand, ready and anxious to join with either, and watching for the favourable opportunity.

From these reasonings, it appears evident, that the expenses of military defence in Canada are not to be avoided by a partial independence, or by anything short of abandonment. These expenses have not been incurred in consequence of any want of popular concessions: they have been caused by the unprincipled and outrageous conduct of the border Americans, which can only be held in check by military defences, or by the influence of British power, upon the American people, through their government.

Referring to the causes of the late insurrection, your Committee would observe, that it is not to be contended, that the influence over the public mind, caused by Sir Francis Head having placed the question at issue in such a light as to show political evils arising from the reform system so strongly as to produce the change in the elections of 1836, could either produce or excuse rebellion. The question at issue involved consequences of vital importance: nor could the rebellion be produced or excused by comparisons made by the public, to the disadvantage of the reformers.—The only pretence amongst all those urged, having any colour of argument, is the alleged corruption at the elections, and the influence then obtained by government. But this pretext seems, upon examination, as unfounded as the others: a people who will permit themselves, in a country in which the elective franchise is so widely diffused, to be bribed or influenced into returning an overwhelming majority to parliament, are not the most likely, therefore, to rise in rebellion against their own decision; and as to the fact of corruption on the part of the government, so far from there being any means of attempting such a course, it is with great difficulty that the government can find the means

Digitized by Google

of carrying on itself, without any such expensive interference with the rights of electors. If the assertion were not too absurd for dispute upon it, reference might be had to the returns from the public offices, and to the proceedings in the Assembly, in which the reformers were invited, in vain, to sustain any one of these accusations, as a full refutation of the charge of corrupt interference influencing the elections.

That dissatisfaction prevailed amongst the defeated party, as in all other cases, is admitted—and that the elected members did not possess the confidence of those who voted against them, was to be expected; but that the successful majority were thereby driven into despair of good government, or were discontented with their own mode of putting members of their own choice into power, is not only contradicted by the argument that the remedy would always be in their own hands, but by the fact of the enthusiastic loyalty with which the populace of the country, chiefly those who formed the majority in the late elections, rallied round the very men and the governor, by whom, according to the complaint of the reformers, they had been disappointed and betrayed. Your Committee are of opinion, that the proximity of the American frontier—the wild and chimerical notions of civil government broached and discussed there—the introduction of a very great number of border Americans into this Province as settlers, who, with some most respectable and worthy exceptions, formed the bulk of the reformers, who carried these opinions so far as disaffection — together with the existence of actual rebellion, and the expectation of a general rising in Lower Canada, emboldened a portion of the minority to rise in rebellion in this Province, in the hope of achieving the overthrow of the Government with foreign assistance.

Is it because reformers, or a portion of them, can command the sympathies of the United States, and of Lower Canadian rebels, that the internal affairs of a British colony must be conducted so as to please them? Where would the colonial government have looked for support and defence, in its time of real danger, had proscription, and discouragement, and disregard, been the portion of those who had shown, at the elections, that they were willing to sacrifice a portion of popular influence, to the great object of retaining British connection?

Digitized by Google

How painfully must such men be excited, at reading, in Lord Durham's report, what appears to be a justification of the course taken by the disaffected, without one word of approval to those who risked and endured so much in defence of British supremacy. In what manner, we ask, did the dominant party make use of the occasion, to persecute or disable the whole body of their political opponents? Who were the numbers of perfectly innocent men thrown into prison, and who suffered in person, property, and character? And what severe laws were passed in *Upper Canada*, under colour of which individuals very generally esteemed, were punished without any form of trial?

That some unauthorized individuals were prone to insult those whom they viewed, at the moment, as a fallen enemy, must have been the case. That the individuals, thus insulted, may have felt themselves aggrieved and annoyed, cannot be doubted—that a great many were thrown into prison, (against whom the clearest proof of high treason was in the hands of the magistracy,) but who were released without trial, a mercy which they most thankfully accepted, can easily be proved. That they were perfectly innocent, could only have been placed beyond dispute by a trial, but in the cases of the great number of individuals arrested there were not only good grounds of suspicion, but means of proof of guilt, and it would be far, indeed, from being the interests of the parties themselves to provoke an inquiry.

It is true, that magistrates, sometimes looking to the circumstances of their own immediate neighbourhoods, rather than to the policy of the Government at large, proceeded with more zeal and strictness than the case demanded; but what good reason for complaint has the criminal, arrested for high treason, in the discovery, that the magistrate, by whose authority he is arrested, has a political leaning different from himself?

It is stated, in Lord Durham's report, that it was generally believed, that the pardon of Samuel Lount, and Peter Matthews,[1] was solicited by no less than thirty thousand of their countrymen. The number of petitioners—men and women—who petitioned for these criminals, appear, upon examination, to be four thousand,

[1] Two Upper Canadian rebels, hanged in 1838. (See Kingsford, *op. cit.*, x. 474.)

Digitized by Google

five hundred, and seventy-four;—such exaggerations necessarily refute themselves.

It is one of the most distressing effects of the publication of the Earl of Durham's report, that His Lordship thus seems to condemn the execution of these men. If they really ought to have been spared, the publication of such a sentiment, from one in high authority, cannot restore them, but it must give rise to feelings, on the part of their friends, and their political party, (who may never have imagined such a possibility as the escape from punishment of every one of the leaders of a rebellion, which inflicted so much calamity upon the Province,) but who will now think that, had the Earl of Durham been in this Province, high treason would have been considered much in the same light as a riot at an election.

Your Committee having animadverted on the principal topics in the report of the High Commissioner, beg, ere they conclude, to observe that, as regards Upper Canada, Lord Durham could not possibly have any personal knowledge, the period of his sojourn in that Province being of such very short duration.—Your Committee regret that His Lordship should have confided the task of collecting information to a person, who, be he whom he may, has evidently entered on his task, with the desire to exalt the opponents of the colonial government in the estimation of the High Commissioner, and to throw discredit on the statements of the supporters of British influence, and British connection—that he should, in such an attempt, have laid himself open to severe censure, was to be expected. Your Committee have, however, through a feeling of respect for Her Majesty's Commissioner, refrained from commenting on his report, in the terms which they honestly avow they think it merits, confident that their forbearance will meet the desires of your Honourable House, and be equally in accordance with the wishes of the family compact hereinbefore mentioned.

All which is respectfully submitted,

J. S. MACAULAY,
Chairman.

COMMITTEE ROOM,
LEGISLATIVE COUNCIL,
11*th day of May*, 1839.

Digitized by Google

RESPONSIBLE GOVERNMENT IN THE MARITIME PROVINCES

THE same problems of the relations between Governor, Councils, and Assembly had long vexed, not only the two Canadas, but also the Maritime Provinces. It is the glory of Nova Scotia and New Brunswick that they won responsible government with none of the bloodshed and misery which accompanied the struggle on the St. Lawrence. This was largely due to the character of the leaders of the Reformers, Lemuel Allan Wilmot in New Brunswick and Joseph Howe in Nova Scotia. No other Canadian has enjoyed such popularity as did Howe for many years in his native province. In him were combined the gifts which were scattered among the Canadian Reformers. To an eloquence as fiery as that of Papineau he added a clearness of vision equal to that of Baldwin or of Bidwell. In 1858 his Speeches and Public Letters were issued at Boston in two volumes, now rare, nominally edited by his friend and colleague William Annand, but really compiled and revised by Howe himself. From this collection we have taken four open letters, written in 1839 to Lord John Russell, in reply to the speech made by that statesman in the House of Commons on June 3, 1839 (see Hansard, Third Series, vol. xlvii., pp. 1254-1275).

The contest in Nova Scotia for responsible government necessarily concerned itself largely with the conduct and

Digitized by Google

the competency of individuals. Its vehemence was intensified by the smallness of the area, which gave the leaders of each side full knowledge of the faults and failings of their opponents. Thus even Howe's best speeches are full of local and personal allusions, which have now lost their interest. The words that once kindled thousands to flame are now but ashes from which the last flicker of life has gone, and his letters give what is really a truer, though an inadequate, idea of his greatness.

Letter I.

Halifax, Nova Scotia,
Sept. 18, 1839.

My Lord,—I beg your Lordship to believe that no desire to seek for notoriety beyond the limited sphere in which Providence has placed me, tempts me to address these letters to you. Born in a small and distant Province of the Empire, and contented with the range of occupation that it affords, and with the moderate degree of influence which the confidence of some portion of its population confers, I should never have thought of intruding upon your Lordship, had not the occupations of my past life, and the devotion to them of many days of toil and nights of anxious inquiry, led me to entertain strong opinions upon a subject which your Lordship has undertaken recently to discuss; and which, while it deeply concerns the honor and the interests of the Empire, appears to be, by Her Majesty's present Ministers, but little understood. Whether or not the Anglo-American population, upholding the British flag on this side of the Atlantic, shall possess the right to influence, through their representatives, the Governments under which they live, in all matters touching their internal affairs (of which their fellow subjects living elsewhere know nothing, and with which they have no right to interfere,) is a question, my Lord, that involves their happiness and freedom. To every Nova Scotian it is no light matter, that the country of his birth, in whose bosom the bones of a hardy and loyal ancestry repose, and whose surface is possessed by

Digitized by Google

a population inferior in none of the physical, moral, or mental attributes which distinguish his race, to any branch of the great British family, should be free and happy. I share with my countrymen their solicitude on this subject; I and my children will share their deep disgrace, if the doctrines recently attributed to Your Lordship are to prevail to the utter exclusion of us all from the blessings and advantages of responsible government, based upon the principles of that Constitution which Your Lordship's forefathers labored to establish, and ours have taught us to revere. To the consciousness of social and political degradation which must be my portion, if the future government of North America is arranged upon the principles recently avowed by the ministry, I am reluctant that the reflection should be added, that the Colonists were themselves to blame, in permitting a great question, without ample discussion and remonstrance, to be decided upon grounds which they knew to be untenable and untrue. In addressing Your Lordship on such a topic, it is gratifying to reflect, that your past life is a guaranty that the moment you are satisfied that a greater amount of freedom and happiness can be conferred on any portion of your fellow subjects than they now enjoy, without endangering the welfare of the whole—when once convinced that the great principles of the British Constitution can be more widely extended, without peril to the integrity of the empire—you will not hesitate to lend the influence of your great name and distinguished talents to the good old cause "for which Hampden died in the field and Sidney on the scaffold."

Lord Durham's report upon the affairs of British North America appears to have produced much excitement in England. The position which his Lordship occupies as a politician at home, naturally draws attention to whatever he says and does; and the disclosures made in the report must appear so strange to many, and the remedies suggested so bold and original to many more, that I am not surprised at the notice bestowed by friends and foes on this very important document. From what I have seen, however, it is evident that His Lordship is paying the penalty of party connection; and that his opinions on Canadian affairs, instead of being tried upon their merits, are in many cases applauded or opposed, as his

Digitized by Google

views of British and Irish politics happen to be relished or condemned. It is almost too much to expect that my feeble voice will be heard amidst the storm of praise and censure that this report has raised; and yet there may be some, who, disliking this mode of estimating a state paper, or distrusting the means of judging possessed by many who express opinions, but whose practical experience of the working of Colonial Constitutions has been but slight—if indeed they have had any—may feel disposed to ask, What is thought of the report in the Colonies? Are its leading features recognized as true to nature and experience there? Are the remedies suggested approved by the people whose future destinies they are to influence and control?

The report has circulated for some months in the Colonies; and I feel it a duty to state the grounds of my belief, that His Lordship, in attributing many if not all of our Colonial evils and disputes, to the absence of responsibility in our rulers to those whom they are called to govern, is entirely warranted by the knowledge of every intelligent Colonist; that the remedy pointed out, while it possesses the merits of being extremely simple and eminently British,—making them so responsible, is the only cure for those evils short of arrant quackery; the only secure foundation upon which the power of the crown can be established on this Continent, so as to defy internal machination and foreign assault.

It appears to me that a very absurd opinion has long prevailed among many worthy people, on both sides of the Atlantic; that the selection of an Executive Council, who, upon most points of domestic policy, will differ from the great body of the inhabitants and the majority of their representatives, is indispensable to the very existence of Colonial institutions; and that if it were otherwise, the Colony would fly off, by the operation of some latent principle of mischief, which I have never seen very clearly defined. By those who entertain this view, it is assumed, that Great Britain is indebted for the preservation of her Colonies, not to the natural affection of their inhabitants—to their pride in her history, to their participation in the benefit of her warlike, scientific or literary achievements,—but to the disinterested patriotism of a dozen or two of persons, whose names are scarcely known in England, except by the

Digitized by Google

clerks in Downing Street ; who are remarkable for nothing above their neighbors in the Colony, except perhaps the enjoyment of offices too richly endowed ; or their zealous efforts to annoy, by the distribution of patronage and the management of public affairs, the great body of the inhabitants, whose sentiments they cannot change.

I have ever held, My Lord, and still hold to the belief, that the population of British North America, are sincerely attached to the parent State ; that they are proud of their origin, deeply interested in the integrity of the empire, and not anxious for the establishment of any other form of government here than that which you enjoy at home ; which, while it has stood the test of ages, and purified itself by successive peaceful revolutions, has so developed the intellectual, moral and natural resources of two small Islands, as to enable a people, once comparatively far behind their neighbors in influence and improvement, to combine and wield the energies of a dominion more vast in extent, and complicated in all its relations, than any other in ancient or modern times. Why should we desire a severance of old ties, that are more honorable than any new ones we can form ? Why should we covet institutions more perfect than those which have worked so well, and produced such admirable results ? Until it can be shown that there are forms of government, combining stronger executive power with more of individual liberty ; offering nobler incitements to honorable ambition, and more security to unaspiring ease and humble industry ; why should it be taken for granted, either by our friends in England, or our enemies elsewhere, that we are panting for new experiments ; or are disposed to repudiate and cast aside the principles of that excellent Constitution, cemented by the blood and the long experience of our fathers, and upon which the vigorous energies of our brethren, driven to apply new principles to a field of boundless resources, have failed to improve ? This suspicion is a libel upon the Colonist, and upon the Constitution he claims as his inheritance ; and the principles of which he believes to be as applicable to all the exigencies of the country where he resides, as they have proved to be to those of the fortunate Islands in which they were first developed.

If the conviction of this fact were once acknowledged by the intelligent and influential men of all parties in

Digitized by Google

Britain, Colonial misrule would speedily end, and the reign of order indeed commence. This is not a party question. I can readily understand how the Duke of Wellington and Sir Robert Peel may differ from Your Lordship or the Earl of Durham, as to whether measures should be carried, which they believe will impair, and you feel will renovate, the Constitution; but surely none of these distinguished men would wish to deny the Constitution itself to large bodies of British subjects on this side of the water, who have not got it, who are anxious to secure its advantages to themselves and their children; who, while they have no ulterior designs that can by any possibility make the concession dangerous, can never be expected to be contented with a system the very reverse of that they admire; and in view of the proud satisfaction with which, amidst all their manly struggles for power, their brethren at home survey the simple machinery of a government, which we believe to be, like the unerring principles of science, as applicable to one side of the Atlantic as to the other, but which we are nevertheless denied.

Many persons, not familiar with the facts, may wonder how this occurs, and be disposed to doubt the correctness of my assertion. It seems strange that those who live within the British empire should be governed by other principles than those of the British Constitution; and yet it is true, notwithstanding. Let me illustrate the fact, by a few references to British and Colonial affairs. In England, the government is invariably entrusted to men whose principles and policy the mass of those who possess the elective franchise approve, and who are sustained by a majority in the House of Commons. The sovereign may be personally hostile to them; a majority of the House of Lords may oppose them in that august Assembly; and yet they govern the country, until, from a deficiency of talent, or conduct, or from ill fortune, they find their representative majority diminished, and some rival combination of able and influential men in condition to displace them. If satisfied that the Commons truly reflect the opinions of the constituency, they resign; if there is any doubt, a dissolution is tried, and the verdict of the country decides to which party its destinies are to be confided. You, in common with every Englishman living at home, are so familiar with the opera-

Digitized by Google

tion of this system, and so engrossed with a participation in the ardent intellectual competition it occasions, that perhaps you seldom pause to admire what attracts as little attention as the air you breathe. The cabman who drives past St. Paul's a dozen times a day, seldom gazes at its ample outline or excellent proportions; and yet they impress the Colonist with awe and wonder, and make him regret that he has left no such edifice in the west.

As a politician, then, Your Lordship's only care is, to place or retain your party in the ascendant in the House of Commons. You never doubt for an instant that if they are so, they must influence the policy and dispense the patronage of the government. This simple and admirable principle of letting the majority govern, you carry out in all your corporations, clubs, and public companies and associations; and no more suspect that there is danger in it, or that the minority are injured when compelled to submit, than you see injustice in awarding a cup at Epsom or Doncaster to the horse that has won, rather than to the animal which has lost the race. The effects of this system are perceptible everywhere. A peer of France, under the old régime, if he lost the smiles of the court suffered a sort of political and social annihilation. A peer of England, if unjustly slighted by the Sovereign, retires to his estate, not to mourn over an irreparable stroke of fortune, but to devote his hours to study, to rally his friends, to connect himself with some great interest in the State, whose accumulating strength may bear him into the counsels of his Sovereign, without any sacrifice of principle or diminution of self-respect. A commoner feels, in England, not as commoners used to feel in France, that honors and influence are only to be attained by an entire prostration of spirit, the foulest adulation, the most utter subserviency to boundless prerogatives, arbitrarily exercised,—but, that they are to be won in open arenas, by the exercise of those manly qualities which command respect; and by the exhibition of the ripened fruits of assiduous intellectual cultivation, in the presence of an admiring nation, whose decision ensures success. Hence there is a self-poised and vigorous independence in the Briton's character, by which he strangely contrasts with all his European neighbors. His descendants in the Colonies, notwithstanding the

Digitized by Google

difficulties of their position, still bear to John Bull, in this respect, a strong resemblance; but it must fade, if the system be not changed; and our children, instead of exhibiting the bold front and manly bearing of the Briton, must be stamped with the lineaments of low cunning and sneaking servility, which the practical operation of Colonial government has a direct tendency to engender.

From some rather close observation of what has occurred in Nova Scotia and in the adjoining Colonies, I am justified in the assertion, that the English rule is completely reversed on this side of the Atlantic. Admitting that in Lower Canada, in consequence of the state of society which Lord Durham has so well depicted, such a policy may have been necessary; surely there is no reason why the people of Upper Canada, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland, should, on that account, be deprived of the application of a principle which is the corner stone of the British Constitution—the fruitful source of responsibility in the government, and of honorable characteristics in the people. If the Frenchmen in one Province do not understand, or cannot be entrusted with this valuable privilege, why should we, who are all Britons, or of British descent, be deprived of what we do understand, and feel that we can never be prosperous and happy without?

Your Lordship asks me for proofs. They shall be given.

Looking at all the British North American Colonies, with one single exception, so far as my memory extends, although it has sometimes happened that the local administration has secured a majority in the lower House, I never knew an instance in which a hostile majority could displace an Executive Council, whose measures it disapproved; or could, in fact, change the policy, or exercise the slightest influence upon the administrative operations of the government. The case which forms the exception was that of the Province of New Brunswick; but there the struggle lasted as long as the Trojan war,—through the existence of several Houses of Assembly; and was at length concluded by an arrangement with the authorities at home, after repeated appeals, and two tedious and costly delegations to England.[1] But the

[1] See Hannay, *Wilmot and Tilley*, chap. iv.

Digitized by Google

remedy applied, even in that case, though satisfactory for the time, can have no application to future difficulties or differences of opinion. Let us suppose that a general election takes place in that Province next year, and that the great body of the people are dissatisfied with the mode in which the patronage of the government has been distributed, and the general bearing of the internal policy of its rulers. If that colony were an English incorporated town, the people would have the remedy in their own hands; if they were entrusted with the powers, which, as British subjects of right belong to them, they would only have to return a majority of their own way of thinking; a few men would change places; the wishes of the majority would be carried out; and by no possibility could anything occur to bring the people and their rulers into such a state of collision as was exhibited in that fine Province for a long series of years. But under the existing system, if a hostile majority is returned, what can they do? Squabble and contend with an Executive whom they cannot influence; see the patronage and favor of government lavished upon the minority who annoy, but never outvote them; and, finally, at the expiration of a further period of ten years, appeal by delegation to England; running the hazard of a reference to a clerk or a secretary whose knowledge of the various points at issue is extremely limited—who has no interest in them, and who, however favorably disposed, may be displaced by some change in the position of parties at home before the negotiations are brought to a close.

In 1836, a general election took place in Nova Scotia; and when the Legislature met for the dispatch of business, it was found that the local government had two-thirds of the members of the representative branch against them. A fair-minded Englishman would naturally conclude that the local cabinet, by a few official changes and a modification of its policy, would have at once deferred to the views and opinions of so large a majority of the popular branch. Did it do so? No. After a fierce struggle with the local authorities, in which the revenue bills and the appropriations for the year were nearly lost, the House forwarded a strong address to the foot of the throne, appealing to the Crown for the redress of inveterate grievances, the very existence of which our Colonial rulers denied, or which they refused to remove.

Digitized by Google

To give Your Lordship an idea of the absurd anomalies and ridiculous wretchedness of our system up to that time, it is only necessary to state, that a Council of twelve persons administered the government, and at the same time formed the upper branch of the Legislature, sitting invariably with closed doors. Only five of these twelve gentlemen were partners in one private bank, five of them were relations, two of them were heads of departments, and one was the chief justice, who in one capacity had to administer the law he had assisted to make, and then in a third, to advise the Governor as to its execution. To heighten the absurdity of the whole affair, it is hardly necessary to add, that only nine of these twelve were members of a particular church, which, however useful or respectable, only embraced one-fifth of the whole population of the Province. To the passage of certain measures for the regulation of our currency, the derangement of which was supposed to be profitable to those who dealt in money, the bankers were said to have opposed their influence. Any attempt at reduction of the expense of the revenue departments, the heads of which sat at the board, was not likely to prevail; while the patronage of the government was of course distributed by the nine churchmen, in a way not very satisfactory to the four-fifths of the people who did not happen to belong to that communion. Such a combination as this never could have grown up in any Colony where the English principle of responsibility had been in operation. Indeed, there was something so abhorrent to British feeling and justice in the whole affair, that Lord Glenelg at once decided that it was "too bad;" and, while in Her Majesty's name he thanked the Commons for the representation they had made, he directed the Governor to dissolve the old Council, and form two new ones, free from the objections which the Assembly had urged.[1]

Had the instructions given been fairly carried out, there is little doubt that in Nova Scotia, as in New Brunswick, the people and their representatives would have been contented for a time; and would have felt that, in extreme cases, an appeal from their local rulers to the Colonial Secretary would be effectual. The existing machinery of government might have been supposed to be adequate to the necessities of the country, with

[1] See Longley, *op. cit.*

Digitized by Google

perhaps an entire revision and repair at the hands of the master workmen at home once in ten years; or whenever the blunders of subordinates in the Colony had completely clogged its operations.

But mark the result. The Governor was instructed to call into the new Councils those who "possessed the confidence of the country." Now, you in England are simple enough to believe, that when the Whigs have, in a house of six hundred and fifty-eight members, a majority of eight or ten, they possess the confidence of the country; and if their majority should happen to be double that number, you would think it droll enough if they were entirely excluded from political influence, and if the new creations of peers and selections for the Cabinet should all be made from the ranks of their opponents. This would be absurd at home; and yet it is the height of wisdom in the Colonies. At the time these commands were sent out, the party who were pressing certain economical and other reforms in Nova Scotia, were represented by two-thirds of the members of the popular branch. The relative numbers have occasionally varied during the past three sessions. At times, as on the recent division upon a delegation, the reformers have numbered thirty-three to eleven, in a House of forty-six. On some questions the minority has been larger; but two-thirds of the whole may be fairly taken as the numerical superiority on all political questions, of the reformers over their opponents. It will scarcely be believed, then, in England, that in the new appointments, by which a more popular character was to be given to the Councils, six gentlemen were taken from the minority, and but two from the ranks of the majority. So that those who had been thanked for making representations to the Queen, and who were pressing a change of policy, were all passed over but two; while those who had resisted and opposed every representation, were honored by appointments, and placed in situations to render any such change utterly hopeless. The Executive Council, the local cabinet or ministry, therefore, contained one or two persons of moderate views, not selected from the House; one from the majority, and eight or ten others, to render his voice very like that of the "man crying in the wilderness." He held his seat about half a year, and then resigned; feeling that while he was

Digitized by Google

sworn to secrecy, and compromised by the policy he had not approved, he had no influence on the deliberations of the Cabinet or the distribution of patronage. Things were managed just as much in accordance with the royal instructions with respect to the Legislative Council. The pack was shuffled, the game was to remain the same. The members of the majority, as I have said before, were all omitted in the new creation of peers, but one; while, both from the House and beyond it, some of the most determined supporters of old abuses were selected; and among them, a young lawyer who had shown a most chivalrous desire to oppose everything Her Majesty so graciously approved; and who, in the excess of his ultra zeal, had, upon the final passage of the address to the crown, when almost all his friends deserted him, voted against the measure in a minority of four.

Here, then, Your Lordship has a practical illustration of the correctness of Lord Durham's observations; and may judge of the chance the present system offers of good Colonial government, even when the people have the Queen and the Colonial Secretary on their side. Such policy would wither all hope in the Nova Scotians, if they did not confide in the good sense and justice of their brethren within the four seas. We do not believe that the Parliament, press, and people of England, when rightly informed, will allow our local authorities "to play such tricks before high heaven;" or force us to live under a system so absurd, so anti-British, so destructive of every manly and honorable principle of action in political affairs. The House of Assembly, as a last resort, after ample deliberation, determined to send two members of that body as delegates to England, to claim the rights of Englishmen for the people of this country. Your Lordship's declaration tells me, that on this point they will be unsuccessful; but patient perseverance is a political characteristic of the stock from which we spring.

You ask me for the remedy. Lord Durham has stated it distinctly: the Colonial Governors must be commanded to govern by the aid of those who possess the confidence of the people, and are supported by a majority of the representative branch. Where is the danger? Of what consequence is it to the people of England, whether half a dozen persons, in whom that majority have confidence, but of whom they know nothing and care less, manage

Digitized by Google

our local affairs; or the same number, selected from the minority, and whose policy the bulk of the population distrust? Suppose there was at this moment a majority in our Executive Council who think with the Assembly, what effect would it have upon the funds? Would the stocks fall? Would England be weaker, less prosperous or less respected, because the people of Nova Scotia were satisfied and happy?

But, it is said, a Colony being part of a great Empire, must be governed by different principles from the Metropolitan State. That, unless it be handed over to the minority it cannot be governed at all. That the majority, when they have things their own way, will be discontented and disloyal. That the very fact of their having nothing to complain of will make them desire to break the political compact, and disturb the peace of the Empire. Let us fancy that this reasoning were applied to Glasgow, or Aberdeen, or to any other town in Britain, which you allow to govern itself. And what else is a Province, like Nova Scotia, than a small community, too feeble to interfere with the general commercial and military arrangements of the government; but deeply interested in a number of minor matters, which only the people to be affected by them can wisely manage; which the ministry can never find leisure to attend to, and involve in inextricable confusion when they meddle with them? You allow a million of people to govern themselves in the very capital of the kingdom; and yet Her Majesty lives in the midst of them without any apprehension of danger, and feels the more secure, the more satisfaction and tranquillity they exhibit. Of course, if the Lord Mayor were to declare war upon France, or the Board of Aldermen were to resolve that the duties upon brandy should no longer be collected by the general revenue officers of the kingdom, everybody would laugh, but no one would apprehend any great danger. Should we, if Lord Durham's principles be adopted, do anything equally outré, check us, for you have the power; but until we do, for your own sakes—for you are as much interested as we are—for the honor of the British name, too often tarnished by these squabbles, let us manage our own affairs, pay our own officers, and distribute a patronage, altogether beneath your notice, among those who command our esteem.

Digitized by Google

The Assembly of Nova Scotia asked, in 1837, for an elective Legislative Council, or for such other reconstruction of the local government as would ensure responsibility. After a struggle of three years we have not got either. The demand for an elective upper branch was made under the impression, that two Houses chosen by the people would sufficiently check an Executive exempt from all direct Colonial accountability. From what has occurred in the Canadas; from the natural repugnance which the House of Peers may be supposed to entertain upon this point; and from a strong desire to preserve in all our institutions the closest resemblance to those of our mother country, a responsible Executive Council, as recommended by Lord Durham, would be preferred. Into the practicability of His Lordship's plan of a union of all the Colonies under one government, I do not intend to enter; that is a distinct question; and whenever it is formally propounded to the local Legislatures, will be gravely discussed upon its own merits; but whether there be union or not, the principle of responsibility to the popular branch must be introduced into all the Colonies without delay. It is the only simple and safe remedy for an inveterate and very common disease. It is mere mockery to tell us that the Governor himself is responsible. He must carry on the government by and with the few officials whom he finds in possession when he arrives. He may flutter and struggle in the net, as some well-meaning Governors have done, but he must at last resign himself to his fate; and, like a snared bird, be content with the narrow limits assigned him by his keepers. I have known a Governor bullied, sneered at, and almost shut out of society, while his obstinate resistance to the system created a suspicion that he might not become its victim; but I never knew one, who, even with the best intentions, and the full concurrence and support of the representative branch, backed by the confidence of his Sovereign, was able to contend, on anything like fair terms, with the small knot of functionaries who form the Councils, fill the offices, and wield the powers of the government. The plain reason is, because, while the Governor is amenable to his Sovereign, and the members of Assembly are controlled by their constituents, these men are not responsible at all; and can always protect and sustain each other, whether assailed by the repre-

Digitized by Google

sentatives of the Sovereign or the representatives of the people. It is indispensable, then, to the dignity, the independence, the usefulness of the Governor himself, that he should have the power to shake off this thraldom, as the Sovereign does if unfairly hampered by faction; and by an appeal to the people, adjust the balance of power. Give us this truly British privilege, and Colonial grievances will soon become a scarce article in the English market.

The planets that encircle the sun, warmed by its heat and rejoicing in its effulgence, are moved and sustained, each in its bright but subordinate career, by the same laws as the sun itself. Why should this beautiful example be lost upon us? Why should we run counter to the whole stream of British experience; and seek, for no object worthy of the sacrifice, to govern on one side of the Atlantic by principles the very reverse of those found to work so admirably on the other. The employment of steamers will soon bring Halifax within a ten days' voyage of England.[1] Nova Scotia will then not be more distant from London, than the north of Scotland and the west of Ireland were a few years ago. No time should be lost, therefore, in giving us the rights and guards to which we are entitled; for depend upon it the nearer we approach the mother country, the more we shall admire its excellent Constitution, and the more intense will be the sorrow and disgust with which we must turn to contemplate our own.

Letter II.

My Lord,—I have read the speech delivered by Your Lordship on the 3d of June, as reported in *The Morning Chronicle*, several times; and beg Your Lordship's attention to what I conceive to be the rational solution of the difficulties raised in that speech to the concession of the principle of local responsibility. Had Your Lordship been more familiar with the practical working of the existing Colonial Constitutions, and with the feelings of

[1] In 1839 the first transatlantic steamship company was formed by Mr. (afterwards Sir) Samuel Cunard, of Halifax. In July, 1840, the first steamer of the company sailed from Liverpool for Halifax and Boston. (See *Dictionary of National Biography*, xiii., p. 800.)

Digitized by Google

the people who smart under the mischiefs they produce, you would not, perhaps, have fallen into some errors by which that speech is disfigured; nor have argued the question as one in which the obvious, manifold, and vital interests of the Colonists were to be sacrificed to fear of some vague and indefinite injury that might be sustained by Imperial interests, if Executive power were taken from the ignorant and given to the well informed—if it passed from the hands of officers to whom but a nominal responsibility can attach, into those of men subject to constant scrutiny, and, whenever they fail in their duty, liable to exposure and disgrace.

Lord Durham recommends that the English rule, by which those who conduct public affairs resign when they have lost the confidence of the Commons, should be applied to the Executive Councillors in North America. Your Lordship denies the existence of the analogies upon which Lord Durham's views are based :—

"It does not appear to me that you can subject the Executive Council of Canada to the responsibility which is fairly demanded of the ministers of the executive power in this country. In the first place, there is an obvious difference in matter of form with regard to the instructions under which the Governor of the Colony acts. The sovereign in this country receives the advice of the ministers, and acts by the advice of those ministers; and indeed there is no important act of the crown for which there is not some individual minister responsible. There responsibility begins, and there it ends. But the Governor of Canada is acting, not in that high and unassailable position in which the Sovereign of this country is placed. He is a Governor, receiving instructions from the crown on the responsibility of a Secretary of State. Here then, at once, is an obvious and complete difference between the Executive of this country and the Executive of a Colony."

Now, my Lord, let me beg Your Lordship's attention to a few of the reasons why I conceive that such an argument as this ought not to stand in the way of the permanent peace, prosperity, and happiness, of a million and a half of human beings. "The Sovereign in England receives the advice of the ministers, and acts by the advice of those ministers;"—but are there no limits assigned by law, within which those advisers are bound to keep?

Digitized by Google

and is not the Sovereign bound to know and to apprise the country when they overstep them? What is the question at issue now between Whigs and Tories? Is it not, whether, according to the spirit and practice of the Constitution, Sir Robert Peel had or had not a right to advise the changes in Her Majesty's household, upon which he insisted, before he would consent to form an administration? Suppose the present Cabinet were to advise Her Majesty to cut off Sir Robert's ears, or to bombard the city of London, would she obey? or would she not say: gentlemen, you are exceeding your powers, and unless you conduct yourselves with more discretion, you must resign? It is plain, therefore, that there are bounds, beyond which, even in the mother country, neither the advisers nor the monarch can pass; and none who seek Colonial responsibility are so mad as to require, that corresponding restrictions shall not be binding here; that there shall not be a limit beyond which no Executive Councillor can pass, and over which no representative of Majesty will consent to be driven. These bounds must be clearly defined in the Act of Parliament which establishes the new system, or in the instructions sent to the Governors, to be communicated to the Legislatures; and which they may, if they see fit, embody in a bill, which, so long as it exists, shall be, to all intents and purposes, the Constitution of the Colony.

But, Your Lordship says:—"The Governor is acting, not in that high and unassailable position in which the Sovereign of this country is placed." Why should he not occupy a position nearly as independent; and be perfectly unassailable, so long as he does not interfere (as the Sovereign would not dare to do) with matters for which others are responsible; nor allow himself, or his Council, to overstep those boundaries which British subjects on both sides of the Atlantic, for the protection of their mutual rights and interests, have established; and for a jealous recognition of which he, in case bad advice be given him, is alone responsible? The Queen's position is unassailable only so long as she does no act which the Constitution does not permit to be done. The Governor, if assailed, would in like manner turn to the Constitution of the Colony committed to his care; and show that, on the one hand, he had neither trenched upon the rights essential to the security of Colonial

Digitized by Google

liberty, nor, on the other, timorously yielded aught which the laws for the protection of Imperial interests made it criminal to yield.

Your Lordship is mistaken, therefore, in supposing that the Sovereign is divested of all responsibility; although I admit it is much more difficult to call him or her to an account than it would be the Governor of a Colony. If the Queen were to deprive Sir Robert Peel of his ears, or open a few batteries upon London, an *émeute* or a revolution would be the only remedy; but a Governor, if he consented to an act which shut out British manufactures, or was tempted to levy war upon a friendly state, could be called to account without difficulty or delay; and hence, I argue, that the facility and certainty of inflicting punishment for offences of this sort would prevent their commission; and operate as a sufficient guard to the Imperial interests, which Your Lordship seems so anxious to protect. If it be said that the people in a Colony may sustain Councillors who give unconstitutional advice, my answer is, that the same thing may occur in England. When it does, a peaceful modification of the Constitution, or a revolution follows; but these cases are not so frequent as to excite alarm, nor is there any reason to believe that they will be more so, in the Colonies, whose power to enforce improper demands is so questionable.

"He is a Governor receiving instructions from the crown, on the responsibility of a Secretary of State." This passage suggests some reflections, which I feel it my duty respectfully to press upon Your Lordship's attention. One of the evils of the existing system, or rather haphazard mode of government, devoid of all system, is the various readings given to the medley of laws, usages, and Colonial office dispatches, by which we are at present ruled. An excellent illustration of the difficulty of obtaining an interpretation of these, about which there can be no mistake—which he who runs may read—may be furnished by contrasting the views put forth by your Lordship with those acted upon by Sir Francis Head;[1] and which, after a bloody rebellion, brought on to prove the value of his theory, he still

[1] Lieut.-Governor of Upper Canada from January, 1836, to March, 1838. Soon after his return to England he published *A Narrative*, in which are related the events of his tenure of office.

Digitized by Google

avows in every succeeding edition of his Narrative, with a consistency and complacency worthy of all praise. "The responsibility," says Your Lordship, "*rests on the Secretary of State.*" "The responsibility," says Sir Francis Head, in every act of his government and in every page of his book, "*rests on me.*" From the moment of his entering into Upper Canada, he threw overboard all the instructions from the Colonial Secretary (who, according to Your Lordship, ought to have been obeyed, for he was alone responsible); he struck out a course of policy entirely new; commenced "putting the padlock on the mind," to be followed by some hundreds of handcuffs on the wrists, and padlocks on the body. His language to Lord Glenelg throughout was, "*you* must support *me*,"—"the fear is that *I* will not be supported at the Colonial office." In fact, from first to last, Sir Francis gave instructions to, instead of receiving them from, the Secretary of State; and finding that Lord Glenelg would not permit him to try his experiments in government, and combat the fiery dragon of democracy in the bosom of a British Province, at the cost of a good deal of blood and treasure, and the prospects of a foreign war, without occasionally offering a little advice, the worthy Baronet resigned; and has ever since been publishing his complaints to the world and claiming its sympathy, as a sufferer for conscience-sake, in upholding the only correct reading of Colonial Constitutions, and which the Secretary of State, and the Whig government of which he was a member, did not understand. The doctors in this case differed; the patient was left prostrate, mangled, bleeding and exhausted, listening to their altercations, but suffering from every gash made to convince each other at her expense; and there she lay, until recently; when, beginning to suspect that both had been talking nonsense and trying absurd experiments, she lifted her languid head, stretched out her wounded limbs, and began to fix her eyes upon the only remedy by which health could be restored.

Let us, in order to convince ourselves that the conclusion to which Upper Canada is coming after all her sufferings is a sound one, examine the two prescriptions and modes of treatment; and ascertain whether either contains anything which ought to rescue it from the oblivion that invariably closes over the nostrums by

Digitized by Google

which the science of politics, like the science of medicine, is often disfigured for a time.

A Colony where the Governor is alone responsible, is Sir Francis Head's interpretation of the system under which we live. It is one very much affected by Colonial Governors everywhere. Unlimited power within a wide Province, is a beautiful idea for an individual to indulge, especially when it is attended with but little risk and only nominal responsibility. Of all the British Colonial Governors who have wielded this vast authority; plumed themselves upon the possession of these plenary powers; and, in the exercise of them, vexed, distracted, and excited to disaffection one Province after another, how many have been tried or punished? How many have met with even a reprimand from the ministry, or a cold look from the Sovereign whose authority they had abused? I leave Your Lordship, whose historical reading has been much more extensive than mine, to point out the instances; I have searched for them in vain. It is true that debates in Parliament occasionally arise upon such subjects; but these, judging by their practical effect, can hardly be taken into account. A Governor knows well that, so long as he holds office, the ministry by whom he was appointed will defend him; that their majority in the Commons precludes the possibility of a vote of censure being passed against him; that the Duke, under whom he probably served, having a majority in the upper House, he is perfectly safe, so long as he commits no act so flagrant as to outrage the feelings of the nation; and which, coming home to the heart of every man and woman in England, would make it unsafe for any parliamentary combination to attempt to protect him. Thus fenced in during his administration, what are his perils when he retires? The Colonists, too happy when rid of the nuisance to be vindictive, and hoping better things from a successor, of whom they are unwilling to suspect any evil, cease to complain; His Excellency is removed to another Province, with a larger salary, to act the same farce over there; or retires to his estates in the mother country, to form one of that numerous body of ex-Governors, who live upon the consciousness of having, once within their lives at least, wielded powers within a wide range and over the destinies of many thousands of their fellow beings, such as are never

Digitized by Google

permitted to be wielded by any individual, however high his rank or widely extended his influence, without full and ample responsibility, within the British Islands themselves. These men, whether they go into Parliament or not, always sympathize with Governors abroad acting upon their darling theory; and, as they are often consulted by ministers who know perhaps a little less than themselves, they are always at hand to stifle the complaints of the Colonists when appeals are made to England.

Your Lordship will perceive, therefore, that when a Governor declares, as did Sir Francis Head, that the responsibility rests on him, he merely means, that he is about to assume extensive powers, for three or four, perhaps for eight or ten years, without the shadow of a chance of his ever being called to account for anything he may do or leave undone. To enable you to form some idea of the peace, prosperity, and satisfaction likely to be diffused over a Province, by a Governor acting upon this principle and exercising these powers, let me request Your Lordship to imagine that, after twenty or thirty years of military service, by which I have become disciplined into a contempt for civil business and a fractious impatience of the opinions of all beneath me in rank, Her Majesty has the right, and graciously deigns to exercise it, of making me mayor of Liverpool. Fancy that, up to the moment when the information is conveyed to me, though I have heard the name of that city several times, and have some vague notion that Liverpool is a large commercial port in England; yet that I neither know on what river, or on which side of the island it is situated; nor have the least knowledge of its extent, population, requirements, or resources; the feelings, interests, prejudices, or rights of its inhabitants. Within a month, having had barely sufficient time to trace out the situation of the place upon the map, read a book or two about it, hear an under secretary talk an hour or two of what neither he nor I understand; receive a packet of instructions—of which half a dozen different readings may be given—and become thoroughly inflated with my own consequence, I find myself in Liverpool; and feel that I am the great pivot upon which all its civil administration, its order and defence, its external relations with the rest of the empire and the rest of the world turns; the fountain from which its internal patron-

Digitized by Google

age is to flow ; and to which all, for a long period of years, must look for social and political ascendancy, if they have no merit ; and, if they have, for a fair consideration of their claims.

Your Lordship will readily believe, that a man thus whisked away from the pursuits which have occupied his thoughts for years, and plunged into a new scene, surrounded by human beings, not one of whose faces he ever saw before ; called to the consideration of a thousand topics, with almost any one of which the assiduous devotion of half a life would be required to make him familiar ; and having to watch over vast interests, balance conflicting claims, decide on the capacity of hundreds, of whose characters, talents, and influence, he is ignorant ; to fill offices, of the duties of which he has not the slightest conception ;—that a man so situated, must be either very vain or very able, if he is not appalled at the extent of the responsibility he has assumed ; and must be an angel of light indeed, if he does not throw the good city of Liverpool into confusion. This, my Lord, is no fancy sketch ; no picture, highly colored to produce effect, but which on close examination, an artist would cast aside as out of drawing ; it is a faithful representation of what occurs in some British Colony almost every year.

But it may be said, all this is granted, and yet there is the Legislature to influence and instruct. Liverpool shall still serve for illustration, and we will presently see to what extent the representative branch operates on the conduct of a gentleman who assumes the responsibility, and is placed in the circumstances described. Let us suppose that the city charter gives me for my advisers, from the moment I am sworn in, ten or a dozen individuals, some of them the heads of departments, enjoying large salaries and much patronage ; others, perhaps, discarded members of the popular branch ; and not a few selected by no rule which the people can clearly understand, but because they happened to flatter the vanity of one or other of my predecessors, or to be connected with the families, or favorable to the views or interests of some of those by whom they were advised. This body, be it observed, by usage never departed from, hold their situations as Councillors for life ; the people have no control over them, neither have I ; they are sworn not to inform upon each other, nor is it necessary that

Digitized by Google

they should; because, as I have assumed the responsibility, and they for their own interest favor the theory, if anything goes wrong they can lay the blame on me. This body, then, which owes no allegiance to the people of Liverpool; which often, in fact, has an interest the very reverse of theirs; which, suspected of usurpation and improper influence, pays back the imputation with unmeasured contempt; and hardly one-fifth of whose number could, by any possibility, be thus honored if their seats depended on popular selection; this body I am compelled to call around me in order that my administration may commence, for without some such assistance, I am unable to take a single step. They come; and there sit, at the first council board, the *responsible* mayor, who knows nothing and nobody, and his *irresponsible* advisers, who, if they do not know everything—and they are seldom greater witches than their neighbors—know their friends, a lean minority of the citizens, from their enemies, the great majority; and are quite aware that, for their interest, it is necessary that I should be taught, as soon as possible, to despise the latter, and throw myself into the arms of the former. Will any sensible man, calmly viewing the relative situations, opportunities, and powers of the parties, believe that any act of administration done, or any appointment made for the first six months, is my act or my appointment? I may choose between any two or three persons whose names are artfully set before me, when an office is to be filled, and if determined to show my independence, may select the worst; but I must choose from the relatives and friends of my advisers, or from the small minority who support them in the hopes of preferment; for to that section, the whole of the city patronage must be religiously confined; and it is of course so managed, that I scarcely know or have confidence in anybody else.

Can Your Lordship believe that such a state of things would give satisfaction to the citizens? Would they not begin to grumble and complain? to warn, to remonstrate, and to expose the machinations and manœuvres of the monopolists? It would be very odd, and they would be very strange Englishmen, if they did not. But, as I have come to Liverpool to demonstrate the beauties of this system of city government, which I highly approve; as I have assumed the whole responsibility, and become

Digitized by Google

inflated with the consciousness of my extensive powers; and, above all, as I am taught by my advisers to look upon every complaint of the *system* as a libel upon my judgment and an insult to my administration—I very soon begin to dislike those who complain; to speak and write contemptuously of them in private and in public; to denounce any who have the hardihood to suggest that some alterations are required, by which the opinions and rights of the majority shall be respected, as men dangerous to the peace of the city, and disaffected towards Her Majesty's person and government; until, in fact, Liverpool becomes very like a town, in the olden time, in which the inhabitants generally being hostile to their rulers, the latter retire to the citadel, from which they project every description of missile and give every species of annoyance.

By and by the time arrives for the legislative branches of the city government to assemble. One of these, being elected at short periods, under a low franchise, which includes the great body of the independent citizens, may be taken as a fair reflection of all their great interests, their varied knowledge, passions, and prejudices; the other is a body of life legislators, selected by my advisers from among their own relatives and friends; with a few others, of a more independent character, to save appearances; but in which they always have a majority of faithful and determined partisans. The business commences; the great majority of members in the representative branch—speaking the matured opinions of the people—complain of the system, and of the advisers it has placed around me; expressing the fullest confidence in me, whom they cannot suspect of wishing to do them harm, but asking my co-operation towards the introduction of changes without which, they assure me, the city never can prosper. But my advisers having a few of their adherents also in this body, they are instructed to declare any change unnecessary; to throw every obstruction in the way; to bully and defame the more conspicuous of those who expose the evils of the existing system; and to denounce them all as a dangerous combination, who, with some covert design, are pressing, for factious objects, a series of frivolous complaints. Of course, as the minority speak the sentiments which I have imbibed, and put themselves forward as my personal champions

Digitized by Google

on all occasions, they rise in my esteem exactly in the same proportion as the other party are depressed, until they become especial pets; and, from their ranks, as opportunities occur, all vacancies are supplied, either in the list of irresponsible advisers, who in my name carry on the government, or in the number of life legislators, who do their bidding in the upper branch.

I respectfully beg Your Lordship to ponder over these passages, which I assure you are true to nature and experience; and ask yourself, after bringing home such a state of things to the bosom of any British city, how long it would be uncomplainingly endured? or how long any ministry, duly informed of the facts, would wish it to continue? Look back, my Lord, and you will find in every rotten corporation, swept away by the immortal act of which Your Lordship was one of the ablest defenders, a resemblance to our Colonial governments as they at present stand, too strong to be mistaken; and, let me venture to hope, that the man who did not spare corruption so near the national centre of vitality; who did not hesitate to combat these hydra-headed minorities, who, swarming over England, everywhere asserted their right to govern the majorities, will not shrink from applying his own principles—the great principles of the Constitution—to these more distant, but not less important portions of the empire.

Your Lordship will, perhaps, urge that Sir Francis Head succeeded in pleasing the people and getting the majority on his side. Admitting the full force which the worthy Baronet gives to this case, it is, after all, but the exception to the general rule. The true history of events in Upper Canada, I believe to have been this: A small, but desperate minority had determined on a violent revolution; this party might have contained some men so wicked, that a love of mischief and desire for plunder were the governing principles, and others, moved by attachment to republican institutions; but, small as it was, the greater number of those found in its ranks had been driven there by the acts of another equally small and equally desperate minority, who had long monopolized,—and, under the present system, may and will monopolize for a century to come—the whole power and patronage of the government, dividing among them the revenues of the country. The great mass of the people

Digitized by Google

of Upper Canada belonged to neither of these bands of desperadoes. They were equally determined, with the one, to uphold British connection; and as equally determined, with the other, to get rid of a wretched system of irresponsible local administration, under the continuance of which they well knew the Province could never prosper. When Sir Francis Head arrived, he entered the Colony—if we are to believe his own account of the matter—almost as ignorant as my imaginary mayor of Liverpool. Sir Francis admits his ignorance, but denies the consequences that must be deduced from it: that he was led and influenced, in the first acts of his administration, until the compact found him ripe for their own purposes and embroiled even with the moderate men on the other side. Then commenced that extraordinary flight of proclamations, addresses, and declamatory appeals; which, winged with the ready pen of a professional author, and shot from the long bow of the family compact, created so much false excitement, and carried so much misrepresentation into every corner of the Province. In these the great question at issue in Upper Canada—which was one between the interests of the family compact and the principles of the British Constitution—was winked out of sight; and the people, not only of that, but of the surrounding Colonies, were made to believe that they were to choose between British and Republican institutions; that Sir Francis and the family compact (Archdeacon Strachan, with the Clergy Reserves, one-seventh of the Province; and Attorney General Hagerman, with the corrupt patronage and influence of administration, under their arms), represented the former; and Mackenzie, and his band of desperadoes, the latter. Thus appealed to, the British population everywhere, as the cunning men at Sir Francis' elbow well knew they would, said, with one voice: If that is the question, then we are for the British Constitution; and hurrah for Sir Francis Head! Mackenzie was an outlaw in a week; his small band of desperadoes was scattered by the energy of the people, the great mass of whom never dreamed of breaking the connection with the mother country. Then came the period in which the compact glorified themselves and Sir Francis; the fever of loyal excitement, in which the miserable minority of officials—feeling strong in the success of their manœuvres, and still stronger

Digitized by Google

in the strength of British thousands profusely spent; regiments of militia to be officered, equipped, and paid—began to wreak their vengeance upon every man who had been known to be hostile to their monopoly; and to identify opinions, not more extreme, when thoroughly understood, than those held by the most moderate section of the Whigs in England, with "privy conspiracy and rebellion." But the period was fast approaching when this unnatural excitement was to subside; when hundreds of thousands of British subjects, looking steadily through the mists that had been raised around them, were to ask of each other, Has this case been decided upon the true issue? Was that the question? For evidence of the solemnity with which this inquiry has been put, and the all-pervading unanimity with which it has been answered, I refer Your Lordship to the meetings which have been held in every section of the Province; to the opinions boldly expressed by every newspaper—with a few, chiefly venal exceptions—printed in Upper Canada; to the bold and determined stand taken by many of the bravest and ablest men who crushed Mackenzie's rebellion, and beat back the sympathizers upon the frontier; to the extraordinary union of Orangemen and Catholics, Methodists, Baptists, Churchmen, and Presbyterians; whose watchwords are British connection and British responsibility, and down with the compact, and the absurd idea cherished by Sir Francis Head, of a government in which the whole responsibility rests upon the Governor. If Your Lordship doubts the utter explosion of your theory, even in this Province, where, for a time, I admit, it seemed to flourish, the approaching general elections will furnish evidence enough; and even Sir Francis, if he were to come out again with another sheaf of proclamations and addresses, and preach this *unitarian* doctrine of responsibility, would no longer be listened to by the Upper Canadians, who have embraced a higher and purer faith.

Having, as I conceive, then, shown Your Lordship that the idea of a Colony in which nobody is responsible but the Governor, while his responsibility is only nominal, however delightful it may appear in the eyes of those who have been or hope to be Governors, is one that never can be a favorite with the Colonists, and has been repudiated and rejected by those of them among whom, for a limited period, and under a system of delusion, it

Digitized by Google

seemed to flourish; let me turn Your Lordship's attention for a few moments to the doctrine maintained by Lord Glenelg, against Sir Francis Head, and now put forth by Your Lordship, in opposition to the Earl of Durham—that the Colonial Secretary is alone responsible, and that the Governor is an agent governing the Province by instructions from him.

Whatever new readings may be given of our unwritten Constitutions, this is the one which always has been and always will be the favorite with Colonial Secretaries and under secretaries, and by which every clerk in Downing Street, even to the third and fourth generation yet to come, will be prepared to take his stand. And why? Because to deprive them of this much-talked-of responsibility, which means nothing, would be to deprive them of the power to which they cling—of the right of meddling interference with every petty question and every petty appointment in thirty-six different Colonies. While things remain as they are, the very uncertainty which reigns over the whole Colonial system invests the Secretary of State with a degree of power and influence, the dim and shadowy outline of which can scarcely be measured by the eye; but which, from its almost boundless extent, and multiform and varied ramifications and relations, possesses a fascination which few men have been born with the patriotic moderation to resist. Though a Secretary of State may occasionally have to maintain, in a particular Province, a doubtful struggle for the whole responsibility and the whole of the power, with some refractory Governor like Sir Francis Head; yet even there he must exercise a good deal of authority, and enjoy a fair share of influence; while in all others his word is law, and his influence almost supreme. A judge, a crown officer, a secretary, or a land surveyor, cannot be appointed without his consent; a silk gown cannot be given to a lawyer without his sanction; while his word is required to confirm the nomination of Legislative Councillors for life, and irresponsible Executive Councillors, in every Province, before the Queen's mandamus is prepared. The very obscurity in which the real character of Colonial Constitutions is involved, of course magnifies the importance and increases the influence of the gentleman who claims the right to expound them. More than one half the Colonists who obtain audiences in Downing

Digitized by Google

Street, are sent there by the mystifications in which the principles of the system are involved; while the other half are applicants for offices, which, under a system of local responsibility, would be filled up, as are the civic offices in Manchester and Glasgow, by the party upon whose virtue and ability the majority of the inhabitants relied. Adopt Lord Durham's principle, and, above all, give to each Colony a well defined Constitution based upon that principle and embodied in a bill, and "the office" will become a desert. The scores of worthy people, with spirits weary of the anomalous and cruel absurdities of the system, and sincerely laboring to remove them, now daily lingering in the ante-rooms, would be better employed elsewhere, in adorning and improving the noble countries which gave them birth, and whose freedom they are laboring to establish; while at least an equal number of cunning knaves, whose only errand is to seek a share of the plunder, had much better be transferred to the open arenas in which, under a system of responsibility, public honors and official emolument could only be won. But then the office of Colonial secretary would be shorn of much power, which, however unwisely exercised, it is always delightful to possess; the dim but majestic forms of authority which now overshadow half the world, would be chastened into reasonable compass; with boundaries, if less imposing and picturesque, for all practical purposes more simple and clearly defined. Nor would under secretaries and clerks have so many anxious and often fawning visitors, soliciting their patronage, listening to their twaddle, wondering at their ignorance, and yet struggling with each other for their smiles. The mother country would, it is true, hear less of Colonial grievances; Parliament would save much time now devoted to Colonial questions; and the people of England would now and then save a few millions sterling, which are required to keep up the existing system by force of arms. But these are small matters compared with the dignity of a Secretary of State.

Here, then, my Lord, you have the reason why your reading of our Constitutions is the favorite one in Downing Street. Let us see, now, whether it is more or less favorable to rational freedom and good government in the Colonies, than that advocated by Sir Francis Head. Your authority and that of Lord Glenelg is with me in

Digitized by Google

condemning his, which I have done, as deceptive and absurd; he will probably join me in denouncing yours, as the most impracticable that it ever entered into the mind of a statesman to conceive.

The city of Liverpool shall again serve us for the purposes of illustration. Turn back to the passages in which I have described a Mayor, ignorant of everything, surrounded by irresponsible but cunning advisers; who, for their own advantage, embroil him with a majority of the citizens, while his countenance, and the patronage created by the taxes levied upon the city, are monopolized by a miserable minority of the whole; and insulted and injured thousands, swelling with indignation, surround him on every side. After Your Lordship has dwelt upon this scene of heartburning and discontent—of general dissatisfaction among the citizens—of miserable intrigue and chuckling triumph, indulged by the few who squander the resources and decide on the interests of the many, but laugh at their murmurs and never acknowledge their authority—let me beg of you to reflect whether matters would be made better or worse, if the Mayor of Liverpool was bound, in every important act of his administration, to ask the direction of, and throw the responsibility on another individual, who never saw the city, who knows less about it than even himself, and who resides, not in London, at the distance of a day's coaching from him, but across the Atlantic, in Halifax, Quebec, or Toronto, and with whom it is impossible to communicate about anything within a less period than a couple of months. Suppose that this gentleman in the distance possesses a veto upon every important ordinance by which the city is to be watched, lighted and improved—by which docks are to be formed, trade regulated, and one-third of the city revenues (drawn from sources beyond the control of the popular branch) dispensed. And suppose that nearly all whose talents or ambition lead them to aspire to the higher offices of the place, are compelled to take, once or twice in their lives, a voyage across the Atlantic, to pay their court to him—to solicit his patronage, and intrigue for the preferment, which, under a better system, would naturally result from manly competition and eminent services within the city itself. Your Lordship is too keen sighted, and I trust too frank, not to acknowledge that no form of government could well be devised more

Digitized by Google

ridiculous than this; that under such no British city could be expected to prosper; and that with it no body of Her Majesty's subjects, within the British islands themselves, would ever be content. Yet this, my Lord, is an illustration of your own theory; this is the system propounded by Lord Normanby,[1] as the best the present cabinet can devise. And may I not respectfully demand, why British subjects in Nova Scotia, any more than their brethren in Liverpool, should be expected to prosper or be contented under it; when experience has convinced them that it is miserably insufficient and deceptive, repugnant to the principles of the Constitution they revere, and but a poor return for the steady loyalty which their forefathers and themselves have maintained on all occasions?

One of the greatest evils of the Colonial Constitution, as interpreted by Your Lordship, is, that it removes from a Province every description of responsibility, and leaves all the higher functionaries at liberty to lay every kind of blame at the door of the Secretary of State. The Governor, if the Colonists complain, shrugs his shoulders, and replies, that he will explain the difficulty in his next dispatch, but in the mean time his orders must be obeyed. The Executive Councillors, who under no circumstances are responsible for anything, often lead the way in concentrating the ire of the people upon the Colonial Secretary, who is the only person they admit their right to blame. It is no uncommon thing to hear them, in Nova Scotia, sneering at him in public debate; and in Canada they are accused of standing by while Lords Glenelg and Melbourne were hanged in effigy, and burned in the capital, encouraging the populace to pay this mark of respect to men, who, if Your Lordship's theory is to be enforced, these persons, at all events, should have the decency to pardon, if they cannot always defend.

I trust, my Lord, that in this letter I have shown you, that in contemplating a well-defined and limited degree of responsibility to attach to Executive Councillors in North America, I have more strictly followed the analogies to be drawn from the Constitution, than has Your Lordship, in supposing that those officers would necessarily overstep all bounds; that, in divesting the Governor of a vague and deceptive description of responsibility, which

[1] Colonial Secretary in the early part of 1839.

Digitized by Google

is never enforced, and of a portion of authority which it is impossible for him wisely to exercise, and yet holding him to account for what does fall within the scope of his character as Her Majesty's representative—the constitutional analogy is still preserved, his dignity left unimpaired, and the difficulties of his position removed. I trust also that I have proved to Your Lordship that the Colonial Constitutions, as they at present stand, are but a medley of uncertainty and confusion; that those by whom they are administered do not understand them; and lastly, that whether Sir Francis Head's interpretation or your own be adopted, neither offer security for good government: the contest between them merely involving a difference of opinion as to who is to wield powers that neither governors nor secretaries can usefully assume, and which of these officers is nominally to bear the blame of blunders that both are certain to commit.

LETTER III.

My Lord,—The next passage of the speech of the 3d of June, which I am bound to notice, is that in which you say:—

"The Governor might ask the Executive Council to propose a certain measure. They might say they could not propose it unless the members of the House of Assembly would adopt it, but the Governor might reply that he had received instructions from home commanding him to propose that measure. How, in that case, is he to proceed? Either one power or the other must be set aside, either the Governor or the House of Assembly; or else the Governor must become a mere cypher in the hands of the Assembly, and not attempt to carry into effect the measures which he is commanded by the home government to do."

This objection is based upon the assumption, that the interests of the mother country and those of the Colonies are not the same; that they must be continually in a state of conflict; and that there must be some course of policy necessary for the Imperial government to enforce, the reasons for which cannot be understood in the Colonies, nor its necessity recognized. This may have been the

Digitized by Google

case formerly in the West Indies, where the conflict was one between the ideas engendered by a state of slavery and a state of freedom; but it is not true of the North American Provinces, to the condition and claims of which my observations are chiefly confined. Of all the questions which have agitated or are likely to agitate Nova Scotia, New Brunswick, or Prince Edward Island, how few, when rightly understood, can be said to involve any Imperial interest; or trench upon any principle dear to our brethren at home, or the concession of which could disturb the peace of the Empire? Have any of these Colonies claimed a right to regulate the foreign trade or foreign policy of the Empire? Have they ever interfered, except to carry out the views of Her Majesty's government, with any of the military or naval operations? Have they exposed a grievance, the continued existence of which is indispensable to the well-being of the British Islands; or demanded a right, the concession of which would not be serviceable to themselves, without doing the least injury to the people of Britain? For what have they asked? For the control of their own revenues, and the means of influencing the appointment and acts of the men who are to dispense them; and who are, besides, to distribute hundreds of petty offices, and discharge functions manifold and various within the Colony itself. The people of England have no knowledge of these matters, nor any interest in them, to give them the right to interfere. Interference does much mischief to the Colonists, and can do no good to their brethren across the water. If British statesmen would let these things alone—and it is over these only that we claim to enforce responsibility—and confine themselves to those general arrangements affecting the whole Empire, of which we admit them to be the best judges, and in the conduct of which we never asked to take a part, it would be impossible to conceive how such a case could arise as that supposed by Your Lordship; or how the Governor could be charged with "a measure which his Executive Council would not dare to propose." Admitting that there might be some subjects requiring discussion in the Provinces, but which the Colonists were not prepared to adopt, surely an Executive Councillor could be got, even if he were opposed to the views of ministers, to submit the measure and explain those views to the popular

Digitized by Google

branch ; or might there not be "open questions" in the Colonies as at home ?

The conclusion at which my mind arrives, then, after the best attention that I can give to this branch of the subject, is, that if the duties and responsibilities of government are fairly and judiciously divided between the Imperial and Colonial authorities, no such case as that assumed by Your Lordship can occur ; and, if it should, surely the good sense of all parties concerned may safely be trusted, to avoid any violent or unpleasant collision. But did it never occur to Your Lordship to inquire, whether the very evil anticipated, as an insuperable objection to the new system, does not disfigure and annually occur under the old ? What else were the Executive Councillors in Upper and Lower Canada doing for a series of years but "proposing certain measures," to be as certainly rejected by the popular branch ? What else are they about now in Newfoundland ? What but this were they doing in New Brunswick, down to the close of Sir Archibald Campbell's administration ? In all these Provinces a state of constant collision between the Executive and the popular branch, which could by no possibility arise under the system I contemplate, would answer the objection, even if the difficulty suggested could be fairly taken into account. If it be said that the Councillors now do not refuse to propose measures, I answer, But if the Legislatures invariably reject them, does government gain anything, or is public business advanced by the system ? What a figure did the Executive cut in Nova Scotia, in 1838, when the Councillor who brought down from the Governor a grave proposition, led the opposition against it ?[1] And how stand things in this Province now ? Are not all the Councillors selections from a lean minority of the commons, in which body almost every debate terminates in a vote of implied want of confidence in them ; and where the Governor they surround has, on several occasions, only been saved from an insulting vote of censure, by the good temper

[1] On March 8, 1838, when Mr. Uniacke, the head of the Executive Council and a member of the House of Assembly, moved resolutions in favour of granting a civil list in exchange for the casual and territorial revenues, a colleague moved in amendment other and contrary resolutions, which were carried. Mr. Uniacke, though at this time a strong opponent of Howe, afterwards changed his views, and was one of the chief advocates of Responsible Government.

Digitized by Google

and moderation of the majority? This is a state of things too ridiculous to be long continued. To me it seems essential that Her Majesty, in every Colony, should be represented by an Executive not only willing "to attempt" but "able to carry" any measures that it may be necessary to propose.

The next objection taken by Your Lordship to the introduction of Provincial responsibility, one eminently calculated to have weight with the body you addressed, and to alarm the timid everywhere, was drawn from an application of the principle, to the management of foreign affairs. "If," says Your Lordship, "the Assembly of New Brunswick had been disposed to carry the point in dispute with the North American States hostilely,[1] and the Executive Council had been disposed to aid them, in my opinion the Governor must have said that his duty to the crown of this country, and the general instructions which he had received from the minister of the crown, did not permit him to take that course, and, therefore, he could not agree with the Executive Council to carry into effect the wish of the Assembly. That is allowed. Does not, then, its very exception destroy the analogy you wish to draw, when, upon so important a point as that of foreign affairs, it cannot be sustained?" Your Lordship, in delivering this passage, of course was not aware that, without the alteration of a single syllable, you answered the very objection that yourself had raised. If the Executive Council of New Brunswick advised Sir John Harvey to declare war upon the State of Maine, "he must have said that his duty to the crown, and his instructions, did not permit him to take that course." Most certainly he would, if a measure so ridiculous had been attempted in New Brunswick, which nobody, who knows anything of that Province, could for a moment imagine. I do not believe that there are ten men in it, certainly there are not fifty in all the lower Provinces put together, who do not know that the sovereign alone

[1] In 1839 Great Britain and the United States were on the verge of war over territory in dispute between New Brunswick and Maine. Governor Fairfield of Maine sent into the disputed district 1,800 of the State militia, and called out 10,000 more. On hearing of this, the Legislature of Nova Scotia unanimously and with tumultuous cheering placed £100,000 and all their militia at the service of the threatened province. War was, however, averted, and in 1842 the territory was partitioned by what is known as The Ashburton Treaty. (See p. 289.)

Digitized by Google

has the right to declare war upon foreign powers; and who are not willing that, upon all the relations of the Colonies with these, and with each other, the Imperial government shall decide. A few of the New Brunswickers blamed Sir John Harvey for not acting upon Her Majesty's instructions to maintain exclusive jurisdiction over the disputed territory, notwithstanding the advice received from the Minister at Washington; but, if those instructions had not existed, and had not been positive, no one would have been idiot enough to suppose that Sir John Harvey would have been bound to make war, on a point of honor or policy newly discovered by his Executive Council, and upon which Her Majesty's government had had no opportunity to decide. Suppose, when Parliament was granting a charter to Hull, it was objected that the Mayor might be advised to make war upon Sweden, (and, in the case of an elective officer, the danger would be greater than if he were appointed by the crown,) would not the same House of Commons that thought it unsafe to let a Colony manage its internal affairs for fear it would engage in foreign wars, laugh at the possibility of such an absurdity being committed by any body of Englishmen out of Bedlam? Why then should it be taken for granted that we are not English in our habits and opinions, our education and training, our capacity to discern the boundaries of authority; and that therefore it would be unsafe to depend upon our wisely exercising powers, which, in the British Islands, millions exercise for their own security and without danger to the State? In the case of Hull, if the objection were gravely urged, the ready answer would be, "No greater powers can be exercised than are granted in the bill; and if there is the least danger of the city authorities doing anything so ridiculous, put in a clause that shall restrain them." And I say—after soberly protesting that the very suspicion of such an attempt is an insult to the understanding, and an imputation upon the character of our population, which they do not deserve—that if you wish "to make assurance doubly sure," put a clause into the bill which concedes the principle of responsibility so far as relates to domestic affairs, and by which all such belligerent Councillors shall be expressly restrained.

Whether this point were or were not thus defined, that any Executive Council, merely because they were re-

Digitized by Google

sponsible to the people, would, after receiving such an answer as Your Lordship admits a British Governor must give, proceed in defiance of his authority, to levy war upon a friendly State, I cannot for a moment believe. If they did, they certainly would so completely fail, and render themselves so supremely ridiculous, that the attempt would not be likely to be repeated, at least for a century to come. Let us suppose the case to have occurred in New Brunswick : that the Executive Council, being responsible, had advised Sir John Harvey to proceed hostilely ; and that, on his declining, they had levied war. In the first place, as all the regular troops were at Sir John's disposal, as Commander-in-Chief within the Province, and not merely as civil Governor, they not only could not have moved a soldier, but would have had the whole military force of that and the adjoining Provinces against them. As the Governor's order to the Colonels and officers commanding the Militia is indispensable, before a single step can be taken, under the laws by which that force is embodied, of course no hostile order would have been given, nor could those laws have been modified or changed without Sir John's assent. And if it be urged, that volunteers would have flocked to the aid of the Executive Council, may I not enquire where they would have obtained arms and ammunition, when all the military munitions and stores were deposited in military warehouses, under the care of commissaries and officers of ordnance responsible only to the crown ? Oh ! no, my Lord, whatever effect such imaginary cases as these may have upon men at a distance, unacquainted with the state of society in British America and the general intelligence which prevails ; here they are laughed at, as the creations of a fertile imagination taxed to combat political improvements that were feared without being understood. If, even under the federative government of the United States, in which each State is much more independent of the central authority than any Colony would be under the system I contemplate, this right of private war has only been once asserted, by a single State, in more than half a century, and then was scouted all over the Continent, is it to be supposed that British subjects will pay less respect to the authority of their Queen, than do Republican Americans to that of their President ?

Digitized by Google

There is one bare possibility, which Your Lordship has not suggested, in opposition to the new system, and yet it is scarcely more ridiculous than some that have been urged; that the Colonial Councillors might claim the control of the squadron upon the North American coast, as well as of the land forces, in their anxiety to engage in foreign wars. The danger in this case would be nearly as great as in the other; for, in modern warfare, a fleet is nearly as necessary as an army; and yet, it is certain that the Admiral upon the station would know how to treat such a claim, should it be preferred by a Council, who, in the wanton exercise of authority, were disposed to transgress all bounds?

The next objection which I am bound to notice, is thus given in the report:—"Let us suppose that an officer of the militia in Upper Canada, after an action, was to order that the persons taken in that action should be put to death on the field. I can conceive it possible, in a state of exasperation and conflict with the people of the neighboring States, that the Assembly might applaud that conduct, and might require that it should be the rule and not the exception,—that all invaders of their territory should be treated in that manner, and that the parties should be put to death without trial. Supposing that to be the case; could the government of this country adopt such a rule? Could the Secretary of State for the Colonies sanction such a rule, and not decide, as my honorable friend, the under secretary has done, that the practice would meet with his decided reprehension?"

Now, my Lord, admitting that such a case might occur once in half a century, under the new system, let me remind Your Lordship that it has already occurred under the old.[1] If it is to have any weight, the fact of its occurrence in a Province in which the Executive Council is irresponsible and the Colonial Secretary is in the exercise of his full powers, makes in favor of my argument; while I have a right to deny, until proof is furnished, that it could occur, if matters were more wisely ordered, and a more rational system established, by which all temptations to foreigners to make inroads into British Provinces, speculating upon the disaffection of the people, would be removed. But, my Lord, life has been taken under your system—"death" has been inflicted "without

[1] For the circumstances referred to, see Kingsford, *op. cit.*, x. 498.

Digitized by Google

trial," illegally, as you infer—and has any punishment followed? Have the laws been vindicated? No!—Then why not? Simply, I presume, because your beautiful mode of government has produced such a state of things in a British Province, that the ministers of the Queen dare not bring the man charged with this high offence to trial. Under a system of responsibility, by which the population were left to manage their domestic affairs, I hold that no such violation of law would be likely to occur; and, that if it did, investigation would be as safe, and punishment as certain, as though a crime had been committed in Middlesex, or Surrey.

I have thus disposed, my Lord, of the military questions; and, as I have left Her Majesty and her representatives in full command of the army and navy, and of the militia force of British America, and have asserted no claim of the Colonists to interfere with foreign treaties and diplomatic arrangements affecting the empire at large; I think, if peace be not maintained with foreign states, the punishment for offences strictly military be not awarded, the blame will not rest with the Executive Councillors, who are to exercise no jurisdiction over these matters, and cannot be responsible if others fail in their duty.

Let me now turn to another class of objections, arising out of our Colonial and foreign trade. "Again," says Your Lordship, "neither could this analogy be maintained with regard to trade between Canada and the mother country, or Canada and any other country. How then can you adopt a principle from which such large exceptions are to be made? If you were to do so, you would be continually on the borders of dispute and conflict; the Assembly and the Executive, on the one hand, requiring a certain course to be pursued, while the Governor, on the other hand, would be as constantly declaring that it was a course he could not adopt; so that, instead of furnishing matter of content and harmony in these Provinces, you would be affording new matter for dispute and discontent if you were to act upon this supposed analogy." Now, my Lord, I feel it my duty to state, that you may take from any part you please to select, of England, Ireland, or Scotland, two hundred thousand persons, and among them you will not find a larger number than are to be found in Nova Scotia, well

Digitized by Google

informed as to the degree of authority in matters of trade, which, for the good of the whole empire and the preservation of the advantages in which all are to participate, it is necessary to confide to the care of the Sovereign and the wisdom of the Imperial Parliament. The great corporations of London, of Bristol, and of Liverpool, do not presume to interfere with these, except by petition and remonstrance, neither do we. Each of these cities has the right to levy small duties within their own limits, for matters of internal regulation, or to aid public improvements ; and these rights they exercise, in common with us, when they do not contravene any British statutes necessary for the protection of the trade of the empire. But, if it can be shown that a law bears unequally upon London or Halifax, and that a flagrant case of hardship exists ; or if the industry of any portion of the people, either in England or the Colonies, is taxed, while no corresponding advantage is reaped by any other portion ; or that, if reaped, it is an unfair and illegitimate advantage,—an appeal is made to Parliament. We have hitherto been contented, although not directly represented in that Assembly, to abide the result of that appeal ; or to pass bills, taking our chance of their being assented to in England. The same thing would occur, even if the Executive Council was responsible ; for, upon this point, there is no part of our population prepared to set up absurd or irrational claims. If Parliament should undertake to legislate directly against our interests ; to cut up our commerce, and prevent the growth of domestic industry ; and, after fair notice and ample proof of injury, were to persist in such a course ; why then a state of things would arise, which similar policy produced elsewhere, in other times, and upon the results of which either responsible or irresponsible Councils could exercise but little influence. But, as political economists at home are every day becoming convinced that the more liberty they afford to the Colonist to conduct his commercial operations the greater will be his demand for British manufactures ; and as, under the guidance of this enlightened policy, the laws of trade and navigation are annually becoming less restrictive, it is not probable that difficulties, which were never insuperable, will all of a sudden admit of no rational remedy ; or that the boundaries of Colonial and Imperial authority, now so well

Digitized by Google

understood, and the recognition of which is so easily enforced, will often be called in question on either side. If the Colonists assert rights which do not belong to them, and persist in their contumacy, disturbing solemn treaties and setting acts of Parliament at naught; why then they have broken the social compact, it is a case of rebellion, and they must be put down.

Let us reduce the difficulty to practice, for the purpose of illustration. Suppose that both branches of the Legislature pass a law by which a heavy duty is laid upon British broadcloths, and those from the United States are admitted duty free; and that the Executive Council, being responsible, advise the Lieutenant Governor to assent to it. Such an absurd piece of bad faith as this could never be attempted in the Lower Provinces; for public opinion would never sanction any interference with the general laws, not intended to remedy abuses, or that struck at Colonial, without promoting British prosperity; nor would any changes be popular which violated the fraternal comity by which British subjects everywhere are bound to encourage and protect each other. But I have supposed the law passed and presented. The Governor would say in this case, as he now invariably says—as Your Lordship admits he must say, if urged to provoke a foreign war: "Gentlemen, you are exceeding your powers. To legislate for your own advantage is one thing; to legislate directly against your brethren at home, for the advantage of foreigners, is another. This bill must be either modified or rejected, or reserved for Her Majesty's assent before it can go into operation." If the parties urging it persisted, a dissolution might be tried, and an appeal to British subjects, in a case where the Governor was clearly right, and his advisers wrong, would never be made in vain; particularly when aided by the Constitutional opposition, which, under a system of responsibility and manly competition, would exist in every Colony. But if it failed; if such an almost impossible thing were upon the cards, as that a majority could be found in Nova Scotia to sustain such an act, or anything bearing a resemblance to it, then a case would have occurred for the interference of the Imperial authorities, who should say to us frankly, If you will come into unnatural and hostile collision, the weakest has the most to fear.

Digitized by Google

Had Your Lordship been as familiar with the mode of dealing with such subjects as most Colonists are who have watched the proceedings of Colonial Assemblies, you would have been satisfied that no danger was to be apprehended from violent collisions about matters of trade. When a new duty is proposed in Nova Scotia, or a reduction suggested, the first question asked on all sides is, will the proposition violate the letter, or does it even run counter to the spirit of the Imperial acts? If it does, in eight cases out of ten, the person bringing the measure forward drops it, on being assured of the fact. In the ninth case, where a doubt exists as to the policy and wisdom of Imperial legislation, it is found, on inquiry, that the clause which seemed to press upon us, originated in a wide view over the whole field of commerce, which British statesmen, often better than others whose positions afford fewer advantages, are enabled to take, and that its repeal would inflict an injury and not confer a benefit. The tenth case is perhaps one in which the Imperial Parliament, either from haste, or prejudice, or insufficient information, has committed an error in political economy, or inflicted a wound upon Colonial without benefiting British industry. In this case (and they only occur once in a great while) no one ever dreams, that, as Your Lordship expresses it, the Imperial Legislature is to be "overruled" by that of the Colony. We never doubt but that an appeal to the good sense and justice of our brethren over the water will be successful. A bill is passed, perhaps, to meet the difficulty; and an explanation of the facts and reasoning in which it originated, is sent with it, in the form of an address to the throne, and in most cases is found to be successful.

This is the mode at present. What reason is there to suppose that it would be much changed, if we had an Executive Council, whose powers and responsibilities did not extend to matters of general commerce, already provided for by Imperial Legislation? If we are so fond of violent conflicts and factious opposition, what hinders us from indulging our propensities now? Shall we be less considerate the more kindly we are treated? Shall we have less respect for Imperial legislation, when we see that it leaves us the entire management of our domestic affairs, and only deals with those great interests which transcend our authority and are beyond our control?

Digitized by Google

Suppose twelve Nova Scotians, who are not responsible to any authority under Heaven, are made accountable to the rest of their countrymen, shall we have a man the more for forcible resistance than we have now—or a gun, a pike, a bomb, or a barrel of powder ?

I have thus, My Lord, gone over the arguments urged by Your Lordship in the speech of the 3d June. I have omitted none that appear to me to have the slightest bearing upon the great question at issue, and I trust I have given to each a fair and satisfactory answer. I have written not only under a solemn sense of duty, but with a full assurance that sophistry, woven around this question, either on one side of the Atlantic or the other, would be torn to shreds in the conflict of acute and vigorous minds now engaged in its discussion. Had Your Lordship, in announcing the decision of the Cabinet, forborne to state the reasons upon which that decision was founded, I might, like counsel at the bar under similar circumstances, have felt myself compelled to acquiesce in a judgment, neither the justice nor the policy of which I could fathom. But when the arguments were stated, and when I saw a question involving the peace and security of six extensive Provinces, and the freedom and happiness of a million and a half of British subjects, disposed of by a mode of reasoning which I knew to be deceptive and unsound,—when I saw, in fact, that the parties claiming their rights were to be turned out of court, with all the arguments and all the evidence upon their side, I felt that to remain silent would be to deserve the social and political degradation which this unjust decision was to entail on my countrymen and myself ; to earn the Helot mark of exclusion from the blessings of that Constitutional freedom, which our forefathers struggled to bequeathe ; and which we should never cease to demand, as a patrimony that runs with our blood, and cannot be rightfully severed from our name.

Letter IV.

My Lord,—The business of factious demagogues, of all parties, is to find fault with everything, to propose nothing practical, to oppose whatever is suggested, to misrepresent

Digitized by Google

and to defame. The object of honest and rational politicians ought to be to understand each other—to deal frankly, abhorring concealment, that mistakes may not be made about facts, terms, or intentions ; to deal fairly, giving credit for a desire to elicit truth, and a wish to weigh in a just balance both sides of every question. Having put before you such evidence as I hope will lead Your Lordship's mind to the conclusion that the system by which the North American Colonies are at present governed, must be abandoned, it is not improbable that Your Lordship may inquire what it is that we are desirous to substitute for that system ? The demand is a reasonable one. The party who seek this change are bound to prove that they have a safe and intelligible remedy for the evils of which they complain. If I cannot show to Your Lordship that, without endangering the authority of the mother country over her Provinces, weakening the constitutional powers of the crown, or trenching on the high privileges and wide range of duty assigned to the Imperial Parliament, a better form of government than that which I am anxious to overturn—one more nearly conforming to the practice and spirit of the Constitution, as understood at home—to the wants and peculiar situation of these Colonies, and less repugnant to the feelings and prejudices of Englishmen everywhere, can be established, then I must quit the field of argument, and cannot complain if Your Lordship adheres to your own opinions.

From what has been already written, it will be seen that I leave to the Sovereign, and to the Imperial Parliament, the uncontrolled authority over the military and naval force distributed over the Colonies ; that I carefully abstain from trenching upon their right to bind the whole empire, by treaties and other diplomatic arrangements, with foreign States ; or to regulate the trade of the Colonies with the mother country, and with each other. I yield to them also the same right of interference which they now exercise over Colonies, and over English incorporated towns ; whenever a desperate case of factious usage of the powers confided, or some reason of state, affecting the preservation of peace and order, call for that interference. As the necessity of the case, the degree and nature of this interference, would always be fully discussed by all parties concerned, I am not afraid

Digitized by Google

of these great powers being often abused, particularly as the temptations to use them would be much lessened if the internal administration were improved.

The Colonial Secretary's duties should be narrowed to a watchful supervision over each Colony, to see that the authority of the Crown was not impaired, and that acts of Parliament and public treaties were honestly and firmly carried out; but he should have no right to appoint more than two or three officers in each Province, and none to intermeddle in any internal affair, so long as the Colonial government was conducted without conflict with the Imperial government, and did not exceed the scope of its authority. This would give him enough to do, without heaping upon him duties so burdensome and various that they cannot be discharged with honor by any man, however able; nor with justice or safety to the millions whose interests they affect. His responsibility should be limited to the extent of his powers; and, as these would be familiar to every Englishman, exposure and punishment would not be difficult, in case of ignorance, incapacity, or neglect.

I have shown, in the illustration drawn from the city of Liverpool, that most Governors come out to Colonies so ignorant of their geography and topography, climate, productions, commerce, resources, and wants; and above all, of the parties, passions, and prejudices which divide them; and of the character, talents, and claims of the men by whom the population are influenced and led; that for the first six or twelve months they are like overgrown boys at school. It is equally clear, that while the business of government must move on, and the administration commence from the day on which the new Governor arrives, the schoolmasters, from whom all his facts are derived—from whom he gathers his views of internal affairs, and his impressions, not only of different parties, but of individuals of each party,—are the irresponsible Executive Councillors, whom the present system calls around him; and who, possessed of such advantages, rarely fail, before he can by any possibility escape from their toils, to embroil him with the popular branch of the Legislature, and the mass of the people by whom it is sustained.

Now let us suppose, that when a Governor arrives in Nova Scotia, he finds himself surrounded, not by this

Digitized by Google

irresponsible Council, who represent nothing except the whims of his predecessors and the interests of a few families (so small in point of numbers, that but for the influence which office and the distribution of patronage give them, their relative weight in the country would be ridiculously diminutive),—but by men who say to him, "May it please Your Excellency, there was a general election in this Province last month, or last year, or the year before last, and an administration was formed upon the results of that election. We, who compose the Council, have ever since been steadily sustained by a majority of the commons, and have reason to believe that our conduct and policy have been satisfactory to the country at large." A Governor thus addressed, would feel that at all events he was surrounded by those who represented a majority of the population; who possessed the confidence of an immense body of the electors, and who had been selected by the people who had the deepest interest in his success, to give him advice and conduct the administration. If he had doubts on this point—if he had reason to believe that any factious combination had obtained office improperly, and wished to take the opinions of the country; or if the Executive Council sought to drive him into measures not sanctioned by the charter; or exhibited a degree of grasping selfishness which was offensive and injurious, he could at once dissolve the Assembly, and appeal to the people: who here, as in England, would relieve him from doubt and difficulty; and, fighting out the battle on the hustings, rebuke the Councillors if they were wrong. This would be a most important point gained in favor of the Governor; for now he is the slave of an irresponsible Council, which he cannot shake off; and is bound to act by the advice of men, who, not being accountable for the advice they give, and having often much to gain and nothing to lose by giving bad advice, may get him into scrapes every month, and lay the blame on him. The Governors would, in fact, have the power of freeing themselves from thraldom to the family compacts, which none of them can now escape by the exercise of any safe expedient known to our existing Constitutions. It will be seen too, that by this system, whatever sections or small parties might think or say, the Governor could never, by any possibility, become, what British Governors have

Digitized by Google

of late been everywhere, embroiled with the great body of the inhabitants over whom he was sent to preside. The Governor's responsibility would also be narrowed to the care of the Queen's prerogative, the conservation of treaties, the military defence, and the execution of the Imperial acts; the local administration being left in the hands of those who understood it, and who were responsible. His position would then be analogous to that of the Sovereign—he could do no wrong in any matter of which the Colonial Legislature had the right to judge; but would be accountable to the crown, if he betrayed the Imperial interests committed to his care.

Executive Councillors now are either heads of departments, or members of the two branches who are generally favorable to the policy of these, and disposed to leave their emoluments intact. One or two persons, of more independent character, and slightly differing from the others upon a few points, are sometimes admitted; but a vast preponderance in favor of the views of the official compact, is always, as a matter of course, maintained. The heads of departments are always very well paid for their trouble in governing the country, by the enormous official salaries they receive; their colleagues either are looking to office, or have means of providing for their relatives and friends; while, if it should so happen, that such a thing as a Colonial Executive Councillor can be found, for any length of time, in office, who has not served himself or his friends, the title, and the consciousness of possessing for life the right to approach and advise every Governor, and give a vote upon every important act of administration, without a possibility of being displaced, or called to account for anything said or done, is no mean reward for the small amount of labor and time bestowed. Formerly, these people, in addition to other benefits, obtained for themselves and their friends immense tracts of crown land. This resource is now cut off, by the substitution, of sales for free grants; but, looking at the Executive Council, or Cabinet, as it exists in any of the North American Provinces at present, we find a small knot of individuals, responsible neither to the Queen, the Secretary of State, the Governor, nor the people; who owe their seats to neither, but to their relatives and friends, through whose influence and intrigues they have been appointed; and who, while they

Digitized by Google

possess among them some of the best salaries, and nearly all the patronage of the country, have a common interest in promoting extravagance, resisting economy, and keeping up the system exactly as it stands. It will be perceived, that such a body as this may continue to govern a Colony for centuries; like the Old Man of the Mountain, who got upon Sinbad's back, ordinary exertions cannot shake it off. To understand more clearly how un-English, how anti-constitutional, how dangerous this body is, it is only necessary to contrast it with what it ought to resemble, but never does. In England, the government of the country is invariably carried on by some great *political* party, pledged to certain principles of foreign or domestic policy, which the people for the time approve; but the cabinet in a Colony is an *official* party, who have the power for ever to keep themselves and their friends in office, and to keep all others out, even though nineteen out of every twenty of the population are against them. What would the people of England say, if some twenty families, being in possession of the Treasury, Horse Guards, Admiralty, Colonial office, had the power to exclude Whigs, Tories, and Radicals; to laugh at hostile votes in the Commons, and set the country at defiance; to defend each other against the crown and the people; to cover ignorance, incapacity, corruption, and bad faith? Would they bear such a state of things for a week? And yet Your Lordship seems to think that we should bear it, for an indefinite period, with patience.

Now, for this body, I propose to substitute one sustained by at least a majority of the Electors; whose general principles are known and approved; whom the Governor may dismiss, whenever they exceed their powers; and who may be discharged by the people whenever they abuse them. Who, instead of laying the blame, when attacked, upon the Governor, or the Secretary of State, shall be bound, as in England, to stand up and defend, against all comers, every appointment made and every act done under their administration. One of the first results of this change would be, to infuse into every department of administration a sense of accountability, which now is nowhere found—to give a vigorous action to every vein and artery now exhibiting torpidity and languor—and to place around the Governor, and at

Digitized by Google

the head of every department of public affairs, the ablest men the Colony could furnish; men of energy and talent, instead of the brainless sumphs,[1] to whom the task of counselling the Governor, or administering the affairs of an extensive department, is often committed under the present system. In England, whether Whigs, Tories or Radicals are in, the Queen is surrounded, and the public departments managed, by some of the ablest men the kingdom can produce. But suppose a mere official faction could exclude all these great parties from power, how long would the government possess the advantage of superior abilities to guide it? Would it not at once fall far below the intellectual range which it now invariably maintains?

But, it may be asked, would not the sudden introduction of this system work injustice to some who have taken offices, in the expectation of holding them for life. Perhaps it might, but even if this were unavoidable, the interests of individuals should give way to the public good. The Boroughmongers had the same objections to the reform act; recorders and town clerks to that which cleansed the corporations. This, like all minor difficulties, might easily be provided for; and I am sure that there are but few of those seeking to establish responsible government, who desire to overturn even a bad system in a spirit of heartless vindictiveness.

The Colonies, having no hereditary peerage, the Legislative Council has been constructed to take its place. From the difficulty of making it harmonize with the popular branch, some politicians in Lower Canada—and it was said that the Earl of Durham, at first, inclined to the opinion—thought it might be abolished. I think there is no necessity for this; first, because it would destroy the close resemblance which it is desirable to maintain between our Institutions and those of the mother country; and again, because a second legislative chamber, not entirely dependent upon popular favor, is useful to review measures, and check undue haste or corruption in the popular branch. Besides, I see no difficulty in maintaining its independence, and yet removing from it the character of annual conflict with the representative body, by which it has been everywhere distinguished.

The main object of the Executive Council being the

[1] "Blockheads"; a Scottish word.

Digitized by Google

preservation of a system by which they enjoy honors, office and patronage, uncontrolled and uninfluenced by the people; and they having the nomination of Legislative Councillors, of course they have always selected a majority of those whose interests and opinions were their own, and who could help them to wrestle with, and fight off the popular branch. Hence the constant collision, and the general outcry against the second chamber. The simple remedy for all this appears to be, to introduce the English practice: let the people be consulted in the formation of the Executive Council; and then the appointments to the Legislative will be more in accordance with public sentiment and the general interest, than they are now. I should have no objection to the Legislative Councillors holding their seats for life, by which their independence of the Executive and of the people would be secured, provided they were chosen fairly by those to whom, from time to time, the constituency, as at home, entrusted the privilege; and not as they are now selected, to serve a particular purpose, and expressly to wrangle, rather than to harmonize with the popular branch. The House of Lords includes men selected by all the administration which the people of Britain have called into power. The Houses of Lords, in the Colonies, have been created by all the administrations which the people never could influence or control.

Some members of the second branch should, of course, have seats in the Executive Council, because in that Chamber also, the acts and the policy of the government would require to be explained; but here, as in England, though very desireable, it would not be essential, that the administration should always be sustained by a majority in the upper House.

One of the first effects of a change of system would be a decided improvement in the character of all the Colonial Assemblies. The great centre of political power and influence would, in the Provinces, as at home, be the House of Commons. Towards that body the able, the industrious, the eloquent, and the wealthy, would press with ten times the ardor and unanimity which are now evinced; because then, like its great prototype in Britain, it would be an open and fair arena, in which the choice spirits of the country would battle for a share in its administration, a participation in its expenditure, and in the honor and

Digitized by Google

influence which public employment confers. Now a bon vivant, who can entertain an aide-de-camp; a good-looking fellow, who dances with a Governor's lady; or a cunning one, who can wheedle a clerk or an under-secretary in Downing Street, may be called to take a part in governing a Province for the period of his natural life. Then, these disreputable and obscure channels of advancement would be closed; and the country would understand the reason, and feel the necessity for every such appointment; and the population would be driven to cultivate those qualities which dignify and adorn our nature, rather than debase it. Now, any wily knave or subservient fool feels that his chance is as good as that of the most able and upright man in the Colony; and far better, if the latter attempts to pursue an independent course; then, such people would be brought to their proper level, and made to win their honors fairly before they were worn.

Another improvement would be the placing of the government of a Colony, as it always is in England, in a majority in the Commons, watched, controlled, and yet aided by a constitutional opposition. Under the present system, the *government* of a Colony is the *opposition* of the Commons, and often presents in that body the most unseemly and ridiculous figure. Numberless instances might be given of this. The three Executive Councillors who sit in the Assembly of Nova Scotia, have been resisting, in miserable minorities, on a dozen divisions during the last two sessions, votes by which the Commons recorded a want of confidence in them and their party; and, in fact, the government, instead of taking the lead in public measures with the energy and ability which should belong to a government, cannot take a single step in the Assembly without the sanction of its opponents. Every emergency that arises, and for which an administration ought to be secure of a majority, presents some absurd illustration of the system. When the border difficulties with the State of Maine occurred last winter, the government of Nova Scotia had not the power to move a single man of the militia force (the laws having expired), or to vote a single shilling, until the majority came forward, as they always have done, in the most honorable manner, and, casting aside all political differences, passed laws for embodying the militia, and granted £100,000 to

Digitized by Google

carry on the war. But, will Your Lordship believe, will it be credited in England, that those who voted that money; who were responsible to their constituents for its expenditure, and without whose consent (for they formed two-thirds of the Commons) a shilling could not have been drawn, had not a single man in the local cabinet by whom it was to be spent; and by whom, in that trying emergency, the Governor would be advised. Nor are things better when the Legislature is not in session. In consequence of the establishment of steam navigation, a dispatch was sent out this spring, after the House was prorogued, requiring the Governor of this Province to put the main roads in thorough repair. Of course he had no means to accomplish the object, nor could his Executive Council guarantee that a single shilling thus expended would be replaced, or that a vote of censure would not be passed upon him if he spent one; and to obviate the difficulty, they were seen consulting and endeavoring to propitiate the members of the majority whose places, upon such terms, they are contented to occupy; and to which, so far as I am concerned, if such humiliations are to be the penalty, they are heartily welcome.

It has been objected to the mode proposed, that it would lead to the rotation of office, or extensive dismissals of subordinates, practised in the United States. But no person abhors that system more than myself; nor has it found any favor in the Colonies, where the English practice is preferred, of removing the heads of departments only. To those who are afraid of the turmoil and excitement that would be produced, it is only necessary to say, that if upon the large scale on which the principle is applied at home, there is no great inconvenience felt, how much less have we to fear where the population is not so dense, the competition not so active, nor the prizes so gigantic. A ministry that in England lasts two or three years is supposed to fulfil its mission; and a quadrennial bill is considered unnecessary, because Parliament, on the average, seldom sits longer than three or four years. As, under a system of responsibility, the contest for power would be fought out here as it is in England, chiefly on the hustings; an administration would, therefore, last in Nova Scotia until the quadrennial bill was passed, for six years certainly—two years more than the Governor, unless specially continued, is

Digitized by Google

expected to hold his appointment; and if it managed judiciously, there would be nothing to prevent it from holding the reins for twenty or thirty years. Of course, an Executive Council in the Colonies should not be expected to resign upon every incidental and unimportant question connected with the details of government; but, whenever a fair and decisive vote, by which it was evident that they had lost the confidence of the country, was registered against them, they should either change their policy, strengthen their hands by an accession of popular talents and principles, or abandon their seats, and assume the duties and responsibilities of opposition. If there was any doubt as to what the nature of such votes should be, the Parliamentary usage would be the guide on this, as on all minor matters.

One of the greatest evils of the present form of government is, that nothing like system or responsibility can be carried into any one branch of the public service. There are, exclusive of militia and road commissions, nearly nine hundred offices to be filled, in the Province of Nova Scotia alone; all essential to the administration of internal affairs; not one of them having anything to do with Imperial interests. And will it be believed in England, that the whole of this patronage is in the hands of a body whom the people can never displace? that the vast majority in the Commons have not the slightest influence in its distribution? while the greatest idiot, who gives his silent and subservient vote in the minority, is certain of obtaining his reward? But the evil does not stop here. It is utterly impossible for the people either to bring to punishment, or to get rid of a single man of the whole nine hundred, if the local government chooses to protect him.

Perhaps the most cruel injury that the system inflicts upon the Colonists, arises from the manner in which they are compelled to conduct their internal improvements. This has been noticed by Lord Durham. But perhaps His Lordship did not fully comprehend the reasons which render the mode—however anomalous and injurious—in some degree acceptable to the constituency, in order that other evils may be prevented, which might be a great deal worse. It will be perceived that the nine hundred offices already referred to, are generally distributed by the irresponsible official party in such a way as to buy

Digitized by Google

their peace, or strengthen their influence in the country. Let us see how this operates in practice. Suppose a county sends to the Assembly four representatives, all of whom support the local government; the patronage of that county is of course at their disposal, to strengthen their hands, and keep down all opposition; but should the whole be hostile to the compact, then it is used to foster opposition, and create a party to displace them. If there is a division of sentiment among the members, those who support are always aided in mortifying and getting rid of those who attack the government. Though but one of the four is an adherent of the compact, every man in the county knows, that his influence is worth much more than that of the other three; that, while one can obtain any favour he wants for a friend or partizan, the others cannot, unless by the barter of a corrupt vote or the sacrifice of principle, even obtain justice. Now, if besides these nine hundred offices, about five hundred commissions for the expenditure of the surplus revenues of the country upon roads, bridges, and internal improvements, were given over, to be disposed of in the same way, the hands of the compact would be so much strengthened, that it would be still more easy to create a party in a county, to endanger the seat of any member who ventured to give an independent vote. To obviate this risk, which was seen at an early period to menace the independence of the Commons, it was determined that the members from each county should recommend the commissioners for the expenditure of moneys within it; and this, being acquiesced in by the Governors for some time before its political bearing was much regarded by the compact, has grown into usage which they have not ventured openly to attack; although, as they still contend that the right of appointment is in the Executive, they seldom fail to show their power and vent their feelings, by petty alterations almost every year. The advantages of this arrangement are, that the majority of the constituency—and not the minority, as in every other case—distribute the patronage under this branch of expenditure; and, as the members who name commissioners have a great deal of local knowledge, and are, moreover, responsible to the people, they can be called to account if they abuse this trust. But still, from the very nature of things, it is liable to abuse. Road com-

Digitized by Google

missions may be multiplied, and sums unwisely expended, to secure votes at the next election; or to reward, not a good road maker, but a zealous partizan. The Executive has not the control it would have if these men were selected by the government; and the legislative power, which should be used to unmask corruption, is sometimes abused to afford it shelter. The remedy which our compacts always suggest, like all their remedies for political discrepancies, aims at the extension of their own influence and the firmer establishment of their own power. They are loud, upon all occasions, in denouncing the corruption of the road system. The minority in the Assembly are eloquent on the same theme; while, through the columns of some newspaper in their pay, they are always pouring forth complaints, that the roads are wretchedly bad and will never be better until the expenditure is placed in their hands. It will be perceived, however, that to follow their advice, would be to make what is admitted on all hands to have its evils, a great deal worse; because, if these nominations are taken from those who possess local information, and given to men who have little or none, who will not be advised by those who have, and who can be called to account by no power known to the Constitution; besides a great deal more of blundering being the result, the partial responsibility, which now makes the system barely tolerable, would be entirely removed. Political partizans would still be rewarded; but, instead of all parties in the country sharing the patronage (for members of the minority, as well as of the majority, make these appointments), it would be confined to those only who supported the compact; and who, however imbecile, ignorant, or corrupt, would then be, as every other officer in the Colony is now, independent of any description of popular control. If any doubt could be entertained as to whether the public would lose or gain by the change, evidence enough might be gathered; for some of the vilest jobs and most flagrant cases of mismanagement that disgrace the history of the road service in Nova Scotia, have been left as monuments of the ignorance or folly of the compact, whenever they have taken these matters into their own hands.

But, make the Governor's advisers responsible to the Assembly, and the representatives would at once resign to them the management of such affairs. It would then

Digitized by Google

be the business of the Executive, instead of leaving the road service to the extemporaneous zeal or corrupt management of individuals, to come prepared, at the commencement of each session, with a general review of the whole system; and, supported by its majority, to suggest and to carry a comprehensive and intelligible scheme, embracing the whole of this service, accounting for the previous year's expenditure and appointments, and accepting the suggestions of members as to the plans of the current year. We should then have an Executive to which every commissioner would be directly accountable; to which he could apply for instructions from January to December; and which, being itself responsible, would be careful of its proceedings; and yet, being more independent than individual members are in dealing with their own constituents, would be more firm and unyielding where it was right. This is the simple, and I am satisfied the only safe remedy for the abuses of the road system. To take the distribution of commissions from fifty men, possessed of much local knowledge and partially responsible, to give it to twelve others, having less information and subject to no control, would be an act of madness. Fortunately, in this, as in all other cases, we have no occasion to seek for new theories, or try unsafe experiments; let us adopt the good old practices of our ancestors and of our brethren; let us "keep the old paths," in which, while there is much facility, there is no danger.

My Lord, there is an argument used against the introduction of Executive responsibility, by Sir Francis Head, which it may be well to notice, because it has been caught up by shallow thinkers everywhere, and is often urged with an air of triumph, that, to those who look beyond the surface, is somewhat ridiculous. It is said, if this principle had been in operation, Papineau and Mackenzie would have been ministers in the respective Provinces they disturbed! But, do those who urge this objection ever stay to inquire, whether, if there had been responsibility in the Canadas, either of these men could have assumed so much consequence as to be able to obstruct the operations of government, and create a rebellion in a British Province? Nothing made a dictator tolerable in ancient Rome but a sense of common danger, arising out of some unusual and disastrous posture of affairs,

Digitized by Google

which rendered it necessary to confide to an individual extraordinary powers—to raise one man far above all others of his own rank—to substitute his will for the ordinary routine of administration, and to make the words of his mouth the law of the land. When the danger passed away, the dictator passed away with it. . Power, no longer combined in one mighty stream, the eccentric violence of which, though useful might be destructive, was distributed over the surface of society, and flowed again through a thousand small but well established channels, everywhere stimulating and refreshing, but nowhere exciting alarm. In political warfare, this practice of the ancients has been followed by the moderns with good success. O'Connell in Ireland, and Papineau and Mackenzie in Canada, grew into importance, from the apparent necessity which existed for large masses of men to bestow upon individuals unlimited confidence, and invest them with extraordinary powers. I wish that the two latter, instead of provoking the maddest rebellions on record, had possessed the sound sense and consummate prudence which have marked every important step of the former's extraordinary career. But, who believes, that if Ireland had had "justice," instead of having it to seek, that ever such a political phenomenon as the great agitator would have appeared, to challenge our admiration and smite the oppressors with dismay? And who dreams that, but for the wretched system upheld in all the Colonies, and the entire absence of responsibility, by which faction or intrigue were made the only roads to power, either of the Canadian demagogues would ever have had an inducement, or been placed in a position to disturb the public peace? I grant that even under the forms which I recommend, such men as Papineau and Mackenzie might have existed; that they might have become conspicuous and influential; and that it is by no means improbable that they would have been Executive Councillors of their respective Provinces, advising the Governors, and presiding over the administration of their internal affairs. But suppose they had; would not even this have been better than two rebellions—the scenes at Windsor, St. Charles and St. Eustache—the frontier atrocities—and the expenditure of three millions sterling, which will be the cost before the accounts are closed? Does any man in his senses believe, if Mackenzie or Bid-

Digitized by Google

well[1] could have guided the internal policy and dispensed the local patronage according to the British mode, that either of them would have been so mad as to dream of turning Upper Canada into a Republic; when, even if they succeeded, they could only hope to be Governors for a few years, with powers very much more restricted, and salaries not more ample, than were theirs for life, or as long as they preserved their majority. Possessed of honours and substantial power, (not made to feel that they who could most effectually serve the crown, were excluded by a false system from its favour, that others less richly endowed might rise upon their ruins), would these men have madly rushed into rebellion with the chances before them of expatriation or of an ignominious death?

You well know, my Lord, that rebels have become exceedingly scarce at home, since the system of letting the majority govern has become firmly established; and yet they were as plenty as blackberries in the good old times, when the sovereigns contended, as Sir Francis Head did lately, that they only were responsible. Turn back and you will find that they began to disappear altogether in England about 1688, and that every political change which makes the Executive more completely responsible to the Legislature and the Legislature to the country at large, renders the prospects of a new growth, "small by degrees and beautifully less." And yet, my Lord, who can assure us, that if the sovereigns had continued, as of old, alone responsible; if hundreds of able men, all running the same course of honourable ambition, had not been encouraged to watch and control each other; and if the system of governing by the minority and not by the majority, and of excluding from power all who did not admire the mode, and quarrelled with the court, had existed down to the present day;—who, I ask, will assure us, that Chatham and Fox, instead of being able ministers and loyal men, might not have been sturdy rebels? Who can say that even Your Lordship, possessed of the strong attachment to liberty which distinguishes your family, might not,—despairing of all good government under such a system, instead of using your influence to extend by peaceful improvements the happiness of the people,—be

[1] M. S. Bidwell was a prominent Upper Canadian Reformer of American origin, and advocated the union of the two countries, but he does not seem to have countenanced the open rebellion of Mackenzie.

Digitized by Google

at this moment in the field at their head, and struggling, sword in hand, to abate the power of the crown? So long as the irresponsibility principle was maintained in Scotland, and the viceroys and a few bishops and courtiers engrossed the administration, there were such men as Hume and Lindsay, and such things as assemblies in Glasgow, general tables in Edinburgh, and armed men in every part of that noble country, weakening the government, and resisting the power of the crown; and up to the period when Lord Normanby assumed the government of Ireland, and it became a principle of administration that the minority were no longer to control the majority and shut them out from all the walks of honourable ambition, what was the attitude in which Mr. O'Connell stood towards the sovereign? Was it not one of continual menace and hostility, by which the latter was degraded, and the former clothed with a dangerous importance? And what is his attitude now? Is it not that of a warm-hearted supporter of the Queen, whose smiles are no longer confined to a faction but shed over a nation, every man of which feels that he is free to obtain, if he has ability and good fortune to deserve, the highest honours in her power to bestow? Daniel O'Connell (and perhaps it may be said that his tail suggested the comparison) is no longer a political comet blazing towards the zenith, and filling the terror-stricken beholders with apprehensions of danger and a sense of coming change; but a brilliant planet, revolving in an orbit with the extent of which all are familiar, and reflecting back to the source of light and honour the beams which it is proud to share. Who any longer believes that O'Connell is to shake the empire and overturn the throne? And who doubts, had he despaired of justice, but he too might have been a rebel; and that the continued application to Ireland of the principles I denounce, would have revived the scenes and the sufferings through which she passed in 1798?

If, my Lord, in every one of the three great kingdoms from which the population of British America derive their origin, the evils of which we complain were experienced, and continued until the principles we claim as our birthright became firmly established, is it to be expected that we shall not endeavour to rid ourselves, by respectful argument and remonstrance, of what cost you open and violent resistance to put down? Can an Englishman, an

Digitized by Google

Irishman, or a Scotchman, be made to believe, by passing a month upon the sea, that the most stirring periods of his history are but a cheat and a delusion; that the scenes which he has been accustomed to tread with deep emotions are but mementos of the folly, and not, as he once fondly believed, of the wisdom and courage of his ancestors; that the principles of civil liberty, which from childhood he has been taught to cherish and to protect by forms of stringent responsibility, must, with the new light breaking in upon him on this side of the Atlantic, be cast aside as an useless incumbrance? No, my Lord, it is madness to suppose that these men, so remarkable for carrying their national characteristics into every part of the world where they penetrate, shall lose the most honourable of them all, merely by passing from one portion of the empire to another. Nor is it to be supposed that Nova Scotians, New Brunswickers, and Canadians—a race sprung from the generous admixture of the blood of the three foremost nations of the world—proud of their parentage and not unworthy of it, to whom every stirring period of British and Irish history, every great principle which they teach, every phrase of freedom to be gleaned from them, are as familiar as household words, can be in haste to forget what they learnt upon their parents' knees; what those they loved and honoured clung to with so much pride, and regarded as beyond all price. Those who expect them thus to belie their origin, or to disgrace it, may as soon hope to see the streams turn back upon their fountains. My Lord, my countrymen feel, as they have a right to feel, that the Atlantic, the great highway of communication with their brethren at home, should be no barrier to shut out the civil privileges and political rights, which more than anything else make them proud of the connection; and they feel also, that there is nothing in their present position or their past conduct to warrant such exclusion. Whatever impression may have been made by the wholesome satire wherewith one of my countrymen[1] has endeavoured to excite the others to still greater exertions; those who fancy that Nova Scotians are an inferior race to those who dwell upon the ancient homestead, or that they will be con-

[1] T. C. Haliburton (1796-1865), Chief Justice of Nova Scotia, who in *Sam Slick, the Clockmaker*, published in 1837, had poked much good-humoured fun at his fellow-countrymen.

Digitized by Google

tented with a less degree of freedom, know little of them. A country that a century ago was but a wilderness, and is now studded with towns and villages, and intersected with roads, even though more might have been done under a better system, affords some evidence of industry. Nova Scotian ships, bearing the British flag into every quarter of the globe, are some proofs of enterprise; and the success of the native author, to whom I have alluded, in the wide field of intellectual competition, more than contradicts the humorous exaggeration by which, while we are stimulated to higher efforts, others may be for a moment misled. If then our right to inherit the Constitution be clear; if our capacity to maintain and enjoy it cannot be questioned; have we done anything to justify the alienation of our birthright? Many of the original settlers of this Province emigrated from the old Colonies when they were in a state of rebellion—not because they did not love freedom, but because they loved it under the old banner and the old forms; and many of their descendants have shed their blood, on land and sea, to defend the honour of the crown and the integrity of the empire. On some of the hardest fought fields of the Peninsula, my countrymen died in the front rank, with their faces to the foe. The proudest naval trophy of the last American war was brought by a Nova Scotian into the harbour of his native town;[1] and the blood that flowed from Nelson's death wound in the cockpit of the Victory, mingled with that of a Nova Scotian stripling beside him, struck down in the same glorious fight.[2] Am I not then justified, my Lord, in claiming for my countrymen that Constitution, which can be withheld from them by no plea but one unworthy of a British statesman—the tyrant's plea of power? I know that I am; and I feel also, that this is not the race that can be hood-winked with sophistry, or

[1] On June 6 (Whit Sunday), 1813, the American frigate *Chesapeake*, captured off Boston Harbour by the British frigate *Shannon*, was carried a prize into Halifax. Captain Broke having been severely wounded, and his first lieutenant killed, the *Shannon* was navigated into Halifax by the second lieutenant, Wallis, afterwards Admiral Sir Provo Wallis (1791-1892), a well-known Nova Scotian. Owing to its being till 1905 the summer head-quarters of the North Atlantic squadron, and garrisoned by British troops, Halifax has always given a great number of officers and men to the British army and navy.

[2] Sir George Augustus Westphal (1785-1875), at that time a midshipman.

Digitized by Google

made to submit to injustice without complaint. All suspicion of disloyalty we cast aside, as the product of ignorance or cupidity; we seek for nothing more than British subjects are entitled to; but we will be contented with nothing less.

My Lord, it has been said, that if this system of responsibility were established, it would lead to a constant struggle for office and influence, which would be injurious to the habits of our population, and corrupt the integrity of public men. That it would lead to the former I admit; but that the latter would be a consequence I must take leave to deny, until it can be shown, that in any of the other employments of life, fair competition has that effect. Let the bar become the bar only of the minority, and how long would there be honour and safety in the profession? Let the rich prizes to be won in commerce and finance be confined to a mere fragment, instead of being open to the whole population; and I doubt whether the same benefits, the same integrity, or the same satisfaction would grace the monopoly, that now spring from an open, fair, and manly competition, by which, while individuals prosper, wealth and prosperity are gathered to the State. To be satisfied that this fair competition can with safety, and the greatest advantage, be carried into public as well as private affairs, it is only necessary to contrast the example of England with that of any Continental nation where the opposite system has been pursued. And if, in England, the struggle for influence and office has curbed corruption and produced examples of consistency, and an adherence to principle extremely rare in other countries, and in none more so than in the Colonies, where the course pursued strikes at the very root of manly independence, why should we apprehend danger from its introduction, or shrink from the peaceful rivalry it may occasion? But, my Lord, there is another view that ought to be taken of this question. Ought not British statesmen to ask themselves, is it wise to leave a million and a half of people, virtually excluded from all participation in the honourable prizes of public life? There is not a weaver's apprentice, or a parish orphan in England, that does not feel that he may, if he has the talent, rise through every grade of office, municipal and national, to hold the reins of government and influence the destinies of a mighty empire. The Queen may be hostile, the Lords

Digitized by Google

may chafe, but neither can prevent that weaver's apprentice or that parish orphan from becoming prime minister of England. Then look at the United States, in which the son of a mechanic in the smallest town, of a squatter in the wildest forest, may contend on equal terms with the proudest, for any office in twenty-eight different States; and having won as many as contents him, may rise, through the national grades, to be President of the Union. There are no family compacts to exclude these aspirants; no little knots of irresponsible and self-elected Councillors, to whom it is necessary to sell their principles and before whom the manliness of their nature must be prostrated, before they can advance. But in the Colonies, where there are no prizes so splendid as these, is it wise or just to narrow the field, and confine to little cliques of irresponsible politicians what prizes there are? No, my Lord, it is neither just nor wise. Every poor boy in Nova Scotia (for we have the feelings of pride and ambition common to our nature) knows that he has the same right to the honours and emoluments of office, as he would have if he lived in Britain, or the United States; and he feels, that while the great honours of the empire are almost beyond his reach, he ought to have a chance of dispensing the patronage and guiding the administration of his native country, without any sacrifice of principle or diminution of self-respect.

My Lord, I have done. If what has been written corrects any error into which Your Lordship or others may have fallen, and communicates to some, either in Britain or the Colonies, information upon a subject not generally understood, I shall be amply repaid. Your Lordship will perhaps pardon me for reminding you, that, in thus eschewing the anonymous, and putting my name to an argument in favour of Executive responsibility for the North American Colonies, I am acting under a sense of deep responsibility myself. I well know that there is not a press in the pay of any of the family compacts, that will not misrepresent my motives and pervert my language; that there is not an overpaid and irresponsible official, from Fundy to the Ottawa, whose inextinguishable hostility I shall not have earned for the remainder of my life. The example of Your Lordship will, however, help me to bear these burdens with patience. You have lived and prospered, and done the State good

Digitized by Google

service, and yet thousands of corrupt boroughmongers and irresponsible corporators formerly misrepresented and hated you. Should I live to see the principles for which I contend, operating as beneficially over British North America, as those immortal acts, which provoked Your Lordship's enemies, do in the mother country, I shall be gratified by the reflection, that the patriotic and honourable men now contending for the principles of the British Constitution, and by whose side, as an humble auxiliary, I am proud to take my stand, whatever they may have suffered in the struggle, did not labour in vain.

I have the honour to be, with the highest respect,
Your Lordship's humble admirer,
And most obedient servant,
JOSEPH HOWE.

Digitized by Google

RESPONSIBLE GOVERNMENT

I

As the result of Lord Durham's report, the English Ministry decided to unite the two Canadas. On June 10, 1839, however, Lord John Russell announced in the House of Commons that, "after the very strong protest against a Union by the Legislative Assembly of Upper Canada, the Government would certainly not feel justified in pressing forward legislation upon the subject during this session." The Bill passed in that year, therefore, dealt only with a revision of "the powers vested in the Governor and Special Council of Lower Canada," and the Union Bill, which was drawn up and printed, was not pressed to a second reading, Lord John Russell announcing on June 28 that "it was the intention of Her Majesty's Government, having prepared that Bill, to send it to Canada, with instructions to obtain information." The task of obtaining this information was entrusted to the new Governor-General, the Right Hon. Charles Poulett Thomson, previously President of the Board of Trade. He reached Quebec on September 17, 1839, and for the next two years the history of Canada is little more than the record of his multifarious activities. A Bill for the reunion of the two provinces was drawn up under his instructions, differing in many respects from that of 1839; its form is said to be largely due to Chief Justice Stuart, of Lower Canada. This Bill was sent home, and passed,

Digitized by Google

with some changes, on July 23, 1840.[1] By its terms, the Union was to come into operation on the issue by the Governor-General of a Royal Proclamation. This was issued on February 5, 1841, and the Union came into effect five days later.[2] On June 14, 1841, the first Parliament of the united Canadas met at Kingston, which had been chosen as capital by the Governor-General, who had in the previous August been raised to the peerage under the title of Baron Sydenham of Sydenham in Kent and Toronto in Canada. Sydenham's aim was to introduce a form of responsible government which should at the same time preserve the direct responsibility of the Governor to the Colonial Office. By his marvellous adroitness he succeeded in preserving an equilibrium destined to be upset soon after his death.

Under the stress of work his health gave way, and he was compelled to forward his resignation to England; but before it could take effect he died, on September 19, 1841, of the effect of a fall from his horse. But though his term of office had been short, he had compressed into it so much varied work that he hardly exaggerated when, in forwarding his resignation to Lord John Russell, he said: "The task which, by Her Majesty's commands, I undertook two years ago is entirely completed, and I have the satisfaction of feeling assured that the great objects of my mission are answered. The Union of the two Canadas is fully perfected, and the measures incidental to that great change have been successfully carried into effect. Effective departments for every branch of the public service

[1] The Bill of 1839 will be found in the printed *Public Bills* for that year (vol. i.). The Bill of 1840, both in its original form and as amended in Committee, will be found in the *Public Bills* of 1840 (vol. i.). In its final form it is given in Houston, *op. cit.*

[2] On February 10. Dent, *The Last Forty Years* (Toronto, 1881), notices that this was the anniversary of the Treaty of 1763, and also of the according of the royal assent to the suspension of the Constitution of Lower Canada in 1838.

Digitized by Google

in this province have been constituted, and the future harmonious working of the Constitution is, I have every reason to believe, secured."

Below are given his instructions from the Colonial Secretary, Lord John Russell, certain letters which passed between him and Lord John during his term of office, and his speech at the opening of the first Parliament of the united Canadas. Certain private letters are also included from his Life, which was written in 1843 by his brother, George Poulett Scrope, M.P. The other letters and papers are taken from *Parliamentary Accounts and Papers*, 1840, vol. xxxi., and 1841, vol. iii.

LORD JOHN RUSSELL TO THE RIGHT HON. C. POULETT THOMSON.

DOWNING STREET,
7th September, 1839.

SIR,—The Queen having been pleased to confide to you the Government of the British provinces in North America, I now transmit to you the various Commissions under the Great Seal, which authorize you to assume and execute that office. The intimate knowledge which, as one of Her Majesty's confidential advisers, you have acquired, of the progress of Canadian affairs during the last few years, and of the views of Her Majesty's Government on that subject, relieves me from the necessity of entering on various explanations, which it would otherwise have been my duty to afford you. But it is fit that I should on the present occasion record for your guidance the intentions of the Ministers of the Crown on the principal topics of Canadian policy, on which you will be called, as the governor of those provinces, to co-operate with them.

The Bill introduced into the House of Commons during the present session of Parliament, embodied, as you are aware, the results of deliberate reflection on the various suggestions contained in the reports of the Earl of Durham. The hope of passing that measure into a law before the Parliamentary recess was defeated by various

Digitized by Google

circumstances which occurred, and especially by the intelligence which, in the commencement of the month of June, reached us from the Lieutenant-Governor of Upper Canada, of the state of public opinion in that colony, as expressed by the resolutions of the Council and Assembly. We have never concealed from ourselves that the success of any plan for the settlement of Canadian affairs must depend on the concurrence and support of the provinces themselves. To learn their deliberate wishes, and to obtain their co-operation by frank and unreserved personal intercourse, will therefore be the first and most important of the duties which you will be called upon to perform.

In our anxiety thus to consult, and as far as may be possible, to defer to public opinion in the Canadas on the subject of constitutional changes, Her Majesty's Government must be understood as entertaining a very strong conviction in favour of the policy of the measure which they have proposed for the adoption of Parliament. Attaching minor importance to the subordinate details of that Bill, we have found no sufficient reason for distrusting the principles on which it proceeds. These are—a legislative Union of the two provinces—a just regard to the claims of either province in adjusting the terms of that Union—the maintenance of the three estates of the provincial legislature—the settlement of a permanent civil list for securing the independence of the judges, and to the executive government that freedom of action which is necessary for the public good—and the establishment of a system of local government by representative bodies, freely elected in the various cities and rural districts. From any of these principles Her Majesty's Government would be most reluctant to recede. After a full investigation of every other plan which has been suggested they have not been able to discover in any but this, the reasonable hope of a satisfactory settlement. It will, therefore, be your first duty to endeavour to obtain for that measure, such an assent in its general principles, and such a correction of its details, as may render it acceptable to the provinces, and productive of permanent advantage. There are various modes by which this object may be accomplished, and in giving an outline of them, Her Majesty has commanded me to express to you her reliance upon your judgment, to be formed upon the spot, as to the employ

Digitized by Google

ment of such as may be most conducive to the contentment and advantage of her Canadian subjects.

1. You may appoint, by authority of the executive, a certain number of persons of weight and experience, selected from each province, to frame articles of Union, to be afterwards proposed to the legislature of Upper Canada.

2. You may assemble the legislature of Upper Canada, and propose to them the appointment of a certain number of Commissioners, to confer with others named by the special Council of Lower Canada.

3. If you find that your overtures to the assembly of Upper Canada are not met in a fair, conciliatory, and reasonable spirit, you may proceed to dissolve the present assembly, and appeal to the sense of the inhabitants of the province.[1] But in the late unsettled state of the province, in the presence of repressed disaffection, with the necessity of a second dissolution before the assembly of the united province can meet—this step must not be resorted to, without the gravest deliberation.

In whatever method you may proceed, Her Majesty's Government will expect to receive from you, founded on competent authority, such a plan of representation, with a division into cities and districts, as may enable them to lay the scheme before Parliament with confidence in the data on which it has been formed, and in the justice of the general arrangement.

I will not now argue on a further supposition, viz., that from difficulty of detail, or mutual disinclination, the plan of Union may be found altogether impracticable. Should you find, after all your efforts, that such is the result, you will lose no time in communicating to me, for Her Majesty's information, the grounds of your opinion, and the nature of any alternative which may seem to you more conducive to the general good.

But above all things, it is important to avoid unnecessary delay. The discussion, which has already been protracted at the expense of so much evil, and still greater hazard to the interests of the Canadian provinces, and of this kingdom, cannot be too speedily brought to a close. Her Majesty's Government will, therefore, anxiously await the result of your inquiries as to the state of public

[1] The tact of Sydenham carried through the measure without any changes either in the Special Council of Lower Canada or in the Legislature of Upper Canada.

Digitized by Google

opinion in the Canadas respecting the proposed Union, and the terms on which, in your opinion, it should be effected. I earnestly trust that it may be received in this country by a period sufficiently early to enable us to communicate it to Parliament at the commencement, or soon after the commencement, of the session of 1840, and then to proceed at once with such measures as may be required to meet the exigencies of the case.

The intelligence which has reached me from Upper Canada, makes it probable that you may be called upon for some explanation of the views of the Ministers of the Crown, on a question respecting which the Bill to which I have referred is necessarily silent. I allude to the nature and extent of the control which the popular branch of the united legislature will be admitted to exercise over the conduct of the executive government, and the continuance in the public service of its principal officers. But it is evidently impossible to reduce into the form of a positive enactment a constitutional principle of this nature. The importance of maintaining the utmost possible harmony between the policy of the legislature and of the executive government admits of no question, and it will of course be your anxious endeavour to call to your counsels and to employ in the public service those persons who, by their position and character, have obtained the general confidence and esteem of the inhabitants of the province.

The military defence of the Canadas is another subject of common interest to both provinces, on which it is necessary that you should be apprized of the views of Her Majesty's Government. In the correspondence between Lord Glenelg and Sir John Colborne, and especially in the despatches of the latter, you will find a full discussion of the plans which have been devised for that purpose. Amongst them is a scheme for extended fortifications, to be erected and maintained at an expense, which it is not evident will be compensated by any equivalent advantage. For the present, at least, notwithstanding the deference so justly due to the opinions of that distinguished Officer, the Ministers of the Crown cannot recommend the adoption of this scheme. On the other hand, the plan suggested from this country and sanctioned by Sir John Colborne, of creating military settlements on the frontier, on the principle of veteran

Digitized by Google

battalions, appears to the Ministers of the Crown as at once the most effective and the most economical plan of defence which could be pursued.[1] Measures will be taken, with the least possible delay, for carrying it into effect; and in the mean time you will discourage and prevent, as far as may be compatible with the public safety, either the augmentation, or the continuance on foot of the volunteers, or the sedentary corps, which were embodied during the last winter as a reinforcement to the regular army. On all subjects of this nature, however, you will consult Sir Richard Jackson,[2] whose judgment and military knowledge will be of the greatest service to you.

The only topic which it remains to notice, as affecting the two Canadian provinces alike, is that of raising an emigration fund from the proceeds of the sales of the Crown lands. Unfortunately, the very elaborate report communicated to me by Lord Durham on this subject, serves but to confirm, and to place in a still clearer light, the difficulties by which, as we were previously aware, the promotion of this most important object is obstructed. Such is the extent of land alienated, and so inconsiderable the proportion which still remains vested in the Crown, that the hope of rendering any effectual aid to emigration by the sale of such lands, cannot at present be reasonably entertained. The necessary preliminary to the introduction of any such system, would be the resumption of the large tracts of land held by grantees in a barren and unprofitable state. This could be effected only by the imposition of a tax on uncleared land, and by enactments for the collection of that tax, to insure the due execution of the law. In the Lower Province there exists, at the present time, no authority by which such a tax could be imposed. In the Upper Province it is hardly to be expected that, in the present state of affairs, the difficulties which encompass the subject will be effectually overcome. Amongst the benefits to be anticipated from the union of the provinces, it is not the least important that the united legislature would be able to act upon subjects of this nature with a great comparative freedom from the undue bias of local interests, and with a large view to the permanent improvement of the provinces.

[1] Nothing seems to have been done in this matter.

[2] The Commander-in-Chief of the forces, who, after Sydenham's death, carried on the government till the arrival of Sir Charles Bagot.

Digitized by Google

Such being the principal subjects of common interest to the two provinces, to which your attention will be immediately called, I have next to notice those which will relate exclusively to the province of Lower Canada.

The Act which has been passed in the last session of Parliament, in amendment of the Act of the first year of Her Majesty's reign, providing for the temporary administration of the Government of Lower Canada, will relieve you and the Special Council from many of the impediments by which your immediate predecessor has been encountered in the attempt to promote the internal interests of the province. Sir John Colborne's despatches, and especially that of the 15th of March, 1839,[1] have pointed out very clearly many objects of great public utility, which he was unable to advance, in consequence of the restrictions under which the legislative powers confided to him and to the Special Council were exercised. To these your attention will of course be given. Much as the suspension of constitutional government in Lower Canada is to be regretted, it will not be without a very considerable compensation, if, during the interval, arrangements should be maturely and wisely made for securing to the people at large the benefit of those social institutions from which, in former times, the thoughts of the local legislature were diverted, by the controversies which then agitated the provincial society.

The establishment of Municipal Institutions for the management of all local affairs, will be among the most important of the subjects to which your attention will be called. On this subject I would refer you to the report of the Earl of Durham, and the Appendix marked C., by which it is accompanied. Although the commissioners whom his Lordship appointed to investigate the question were unable, from the shortness of the time, to submit to him any conclusive recommendations respecting it, the information which they collected will prove of much advantage to you. On the importance of such institutions I need not enlarge. Your acquaintance with the system of municipal government in this country, will point out to you that there is no mode in which local affairs can be so properly administered, and that they form, at the same time, the most appropriate and effec-

[1] Colborne's despatches for 1838 are found in *Accounts and Papers*, 1839, vol. xxxii., and for 1839 in *Accounts and Papers*, 1840, vol. xxxi.

Digitized by Google

tual means of training the great body of the people to the higher branches of legislation.

The promotion of education among all classes of the people will also engage your earnest attention. On this subject I can add nothing to the information afforded by the reports of the Earl of Gosford,[1] and his colleagues, and of the Earl of Durham. It will afford Her Majesty's Government the most sincere satisfaction to co-operate with you in any measures which you may adopt for the furtherance of this important object.

In any view which can now be taken of the affairs of British North America, it is obvious that those of Upper Canada must occupy a very prominent place. I am persuaded that the zeal for the public good, and the superiority to considerations of a nature merely personal, by which the present Lieutenant-Governor has been distinguished during his long career of public service, will obviate the risk of any dissatisfaction being entertained by him, if you should find it necessary, for a time, to assume in person the administration of the government of Upper Canada, and during that period, to supersede him in the discharge of his functions. In the prosecution, therefore, of your endeavour to obtain as much agreement as possible in the plan to be hereafter submitted to the Imperial Parliament, you will not hesitate to repair to Toronto. When there, you would, of course, avail yourself of the experience which Sir George Arthur has acquired, and of the assistance which he will have both the ability and the disposition to afford you.

The first topic which will engage your attention in Upper Canada is the present financial state of the province. This has been most elaborately explained in the Lieutenant-Governor's recent despatches. Embarrassing as the immediate state of the question is, it is yet gratifying to learn from those communications, that the difficulties in which the provincial treasury is involved, originate in causes which do not affect the wealth or the ultimate resources of the province. Having undertaken great internal improvements, especially those of the Welland and Rideau canals,[2] with inadequate resources,

[1] An Irish nobleman sent out to Canada as High Commissioner in 1835, and soon afterwards appointed Governor.

[2] The Welland Canal connects Lakes Erie and Ontario, thus overcoming the obstacle to navigation presented by Niagara Falls. Its

Digitized by Google

the works have been very imperfectly completed, and the returns are absorbed in a succession of repairs, which would not have been required if the canals had been originally formed with a greater command of capital. These works having also been effected by borrowed money, the loans have been raised at a higher rate of interest than would have been required if the credit of the province had not been diminished by the absorption of its revenue in such undertakings. Further, it appears that the provincial treasury might have been recruited with no perceptible addition to the public burdens, if it had been possible to increase, to a moderate extent, the duties of import on goods introduced for consumption. But, under the combined influence of these causes, the expenditure has at length far exceeded the receipt; and some measures for reinstating the provincial treasury in a secure condition have become indispensable.[1]

Her Majesty's Government willingly acknowledge the great advantage which will arise from extending to Upper Canada such aid as the revenue of Great Britain could afford, consistently with a due regard to the interest of this kingdom, and of the other members of the empire at large. This is, however, a subject for distinct consideration. For the present I shall confine my attention to the remedial measures adopted by the local legislature in their last session.

Of these, the first was the raising a loan by Government debentures, which was sanctioned by a Bill, entitled "An Act to afford further facilities to negociate debentures for the completion of certain works."

This Bill was reserved for the signification of Her Majesty's pleasure, and has been confirmed by the Queen in Council.

---

early construction was marked by unscrupulous jobbery. (See Kingsford, x. 245-250, 333.) The Rideau Canal, or rather system of canals, was built between 1817 and 1832, connecting Kingston and Ottawa by means of the Cataraqui and Rideau Rivers. It was designed mainly as a military work, to give an alternative route from Toronto to Montreal, should the Americans, as in 1813, control for a time the line of the St. Lawrence. (See Kingsford, x. 221-222.)

[1] "The province was on the verge of bankruptcy. The annual revenue was £78,000; the interest on the debt, £65,000; the expenses of the Government, £55,000; so there was an annual deficiency of £42,000" (Kingsford, x. 507).

Digitized by Google

The second financial measure of the year was the enactment of a Bill, authorizing the issue of treasury notes to the amount of £250,000 sterling, for £1 each. This Bill has also been reserved for the signification of Her Majesty's pleasure. I regret to state that Her Majesty cannot be advised to confirm it. The issue of such an amount of small inconvertible paper money, as a resource for sustaining the public credit, is not to be justified even by the present exigency of public affairs. The effect of the measure on the currency and monetary transactions of Upper Canada, and on the value of private property throughout the province, must be such as to counterbalance any advantage which could be obtained from this temporary relief. If the credit of the country can be made available to sustain for a time the transactions of the local treasury in a less hazardous and objectionable form, you will accede to any plan of that nature. It is only as a temporary expedient that any such resource will be requisite; and it is of great importance to the future welfare of the province, that the scheme devised to meet the pressure of the passing day should not be such as to preclude the early return to a more salutary course of financial operations.

A third measure of the same general character has been adopted by the local legislature, to provide for the indemnity of the sufferers by hostile incursions from the United States. The Bill for this purpose, entitled "An Act to ascertain and provide for the payment of all just claims arising from the late rebellion and invasions of this province," has also been reserved for the signification of Her Majesty's pleasure. I fear that Her Majesty's assent to this Bill, in its present form, cannot be given. The objection is not to the measure itself, in the propriety of which Her Majesty's Government entirely concur; but we think it impossible to advise The Queen to assent to an Act, which, if so sanctioned, would, by the terms of the preamble, convey a pledge from Her Majesty that the charge of this indemnity should be ultimately borne by the British treasury. The principle involved in this declaration is of too much importance to be thus incidentally recognised, even supposing it to be right that it should be admitted at all. Neither could Her Majesty properly affirm, in so solemn a manner, her acquiescence in this claim on the revenue of this country,

Digitized by Google

unless it had been previously sanctioned by Parliament,—a sanction which has not been, and which could not hitherto have been, obtained. If a similar Bill should be passed, with the omission of the preamble, you will readily concur in the enactment of it.[1]

The Legislature of Upper Canada have also passed a Bill, which has in like manner been reserved, for settling a civil list on Her Majesty in exchange for the Crown revenues of the province. It is with sincere regret that I am compelled to announce that this is also a measure from which, in its present form, the assent of the Crown must be withheld. The effect of it is to exclude from the protection of the grant the clergy, who at present derive their maintenance from the Crown revenue, and of whom the great majority have resorted to Upper Canada on the assurance that their stipends would be thus secured to them. Now as this charge has been lawfully fixed upon the Crown revenue, and as the Crown has no other resource from which it could be paid, it is impossible to accept the proposed civil list on such terms. Anxious as Her Majesty's Government are to defer to the representatives of the people of Upper Canada in all matters connected with the internal government of that province, they cannot consent to a measure which would practically involve a violation of the pledged faith of the Crown. We cannot decline the obligation of maintaining the rights of the clergy in question; and I can only express my hope that the local legislature may concur with the Ministers of the Crown as to the propriety of re-enacting this Bill, with the addition of the charge necessary for the maintenance of those rights. The burthen will cease with the lives of the present incumbents, and is now in the course of a progressive diminution.

The last of the reserved Bills of the late Session has reference to the long controverted subject of the clergy reserves. To this Bill the Royal assent could not have lawfully been given, until it had been laid for 30 days before either House of Parliament. It was not until the 15th August that I received from the Lieutenant-Governor the document necessary to enable me to fulfil the requisition of the Constitutional Act of 1791. It was, therefore,

[1] Such an Act, confined to Upper Canada, was passed in the first session of the Legislature of the United Provinces. For the Rebellion Losses Bill in Lower Canada, see p. 313.

Digitized by Google

impossible that the Bill should be finally enacted by the Queen in Council until after the commencement of the Parliamentary Session of 1840. But had this difficulty not arisen, there were other motives which would have effectually prevented the acceptance of this measure by Her Majesty. Parliament delegated to the local legislature the right of appropriating the clergy reserves, and the effect of the Bill is to retransfer this duty from the local legislature to Parliament, with a particular restriction. I am advised by the law officers of the Crown that this is an unconstitutional proceeding. It is certainly unusual and inconvenient. Her Majesty cannot assume that Parliament will accept this delegated office, and if it should not be so accepted the confirmation of the Bill would be productive of serious prejudice, and of no substantial advantage. It would postpone indefinitely the settlement of a question which it much concerns the welfare of the provinces to bring to a close; besides I cannot admit that there exist in this country greater facilities than in Upper Canada for the adjustment of this controversy; on the contrary, the provincial legislature will bring to the decision of it an extent of accurate information as to the wants and general opinions of society in that country, in which Parliament is unavoidably deficient. For all these reasons Her Majesty will decline to give her assent to this Bill.[1]

I have thus adverted to the principal topics which will engage your attention as Governor-General of British North America, in reference to the two Canadas, omitting many minor questions which will form the subject of future correspondence, and passing by for the present all that relates to the affairs of New Brunswick, Nova Scotia, and Prince Edward Island. I reserve these for consideration hereafter.

Finally, I am commanded to direct that in all the provinces of British North America you will inculcate upon the minds of The Queen's subjects Her Majesty's fixed determination to maintain the connexion now subsisting

[1] Sydenham succeeded in getting a Bill passed in the last session of the Legislature of Upper Canada, dividing the reserves among the various recognized religious bodies in the province. This was declared *ultra vires* by the law officers of the Crown in England, but a similar measure was passed by the Imperial Parliament. The question was not finally settled till 1854, when the reserves were secularized, with compensation for holders of life interests.

Digitized by Google

between them and the United Kingdom, and to exercise the high authority with which She has been invested by the favour of Divine Providence, for the promotion of their happiness and the security of her dominions.[1]

I have, &c.,
(Signed) J. RUSSELL.

DOWNING STREET,
14th October, 1839.

SIR,

It appears from Sir George Arthur's despatches that you may encounter much difficulty in subduing the excitement which prevails on the question of what is called "Responsible Government." I have to instruct you, however, to refuse any explanation which may be construed to imply an acquiescence in the petitions and addresses upon this subject. I cannot better commence this despatch than by a reference to the resolutions of both houses of Parliament, of the 28th April and 9th May, in the year 1837.

The Assembly of Lower Canada having repeatedly pressed this point, Her Majesty's confidential advisers at that period thought it necessary not only to explain their views in the communications of the Secretary of State, but expressly called for the opinion of Parliament on the subject. The Crown and the two houses of Lords and Commons having thus decisively pronounced a judgment upon the question, you will consider yourself precluded from entertaining any proposition on the subject.

It does not appear, indeed, that any very definite meaning is generally agreed upon by those who call themselves the advocates of this principle; but its very vagueness is a source of delusion, and if at all encouraged, would prove the cause of embarrassment and danger.

The constitution of England, after long struggles and

[1] On May 8, 1841, Lord John Russell again wrote to Lord Sydenham (*Parliamentary Accounts and Papers*, 1841, vol. iii.; *Correspondence Relative to the Affairs of Canada*, p. 86): "In any measures which may be adopted it must be taken for granted that Her Majesty persists in the determination to maintain at all hazards Her Royal Authority in Canada. Neither the honour of Her Majesty's Crown, nor the support due to Her loyal subjects in British North America, nor the provident care of the interests of the Empire at large, would permit any deviation from this fixed principle of British policy."

Digitized by Google

alternate success, has settled into a form of government in which the prerogative of the Crown is undisputed, but is never exercised without advice. Hence the exercise only is questioned, and however the use of the authority may be condemned, the authority itself remains untouched.

This is the practical solution of a great problem, the result of a contest which from 1640 to 1690 shook the monarchy, and disturbed the peace of the country.

But if we seek to apply such a practice to a colony, we shall at once find ourselves at fault. The power for which a minister is responsible in England, is not his own power, but the power of the Crown, of which he is for the time the organ. It is obvious that the executive councillor of a colony is in a situation totally different. The Governor under whom he serves, receives his orders from the Crown of England. But can the colonial council be the advisers of the Crown of England? Evidently not, for the Crown has other advisers, for the same functions, and with superior authority.

It may happen, therefore, that the Governor receives at one and the same time instructions from the Queen, and advice from his executive council, totally at variance with each other. If he is to obey his instructions from England, the parallel of constitutional responsibility entirely fails; if, on the other hand, he is to follow the advice of his council, he is no longer a subordinate officer, but an independent sovereign.

There are some cases in which the force of these objections is so manifest, that those who at first made no distinction between the constitution of the United Kingdom, and that of the colonies, admit their strength. I allude to the questions of foreign war, and international relations, whether of trade or diplomacy. It is now said that internal government is alone intended.

But there are some cases of internal government, in which the honour of the Crown or the faith of Parliament, or the safety of the state, are so seriously involved, that it would not be possible for Her Majesty to delegate her authority to a ministry in a colony.

I will put for illustration some of the cases which have occurred in that very province where the petition for a responsible executive first arose—I mean Lower Canada.

During the time when a large majority of the assembly

Digitized by Google

of Lower Canada followed M. Papineau as their leader, it was obviously the aim of that gentleman to discourage all who did their duty to the Crown within the province, and to deter all who should resort to Canada with British habits and feelings from without. I need not say that it would have been impossible for any minister to support, in the Parliament of the United Kingdom, the measures which a ministry, headed by M. Papineau, would have imposed upon the Governor of Lower Canada; British officers punished for doing their duty; British emigrants defrauded of their property; British merchants discouraged in their lawful pursuits,—would have loudly appealed to Parliament against the Canadian ministry, and would have demanded protection.

Let us suppose the Assembly as then constituted, to have been sitting when Sir John Colborne suspended two of the judges.[1] Would any councillor, possessing the confidence of the Assembly, have made himself responsible for such an act? And yet the very safety of the province depended on its adoption. Nay, the very orders of which your Excellency is yourself the bearer, respecting Messrs. Bedard and Panet,[1] would never be adopted, or put in execution by a ministry depending for existence on a majority led by M. Papineau.

Nor can anyone take upon himself to say that such cases will not again occur. The principle once sanctioned, no one can say how soon its application might be dangerous, or even dishonourable, while all will agree that to recall the power thus conceded would be impossible.

While I thus see insuperable objections to the adoption of the principle as it has been stated, I see little or none to the practical views of colonial government recommended by Lord Durham, as I understand them. The Queen's Government have no desire to thwart the representative assemblies of British North America in their measures of reform and improvement. They have no wish to make those provinces the resource for patronage at home. They are earnestly intent on giving to the talent and character of leading persons in the colonies, advantages similar to those which talent and character,

[1] These two gentlemen had been suspended in 1838 by Sir John Colborne for factious sympathy with the rebels. In 1841 they were reinstated by the home Government. (Kingsford, x. 188-191.)

Digitized by Google

employed in the public service, obtain in the United Kingdom. Her Majesty has no desire to maintain any system of policy among her North American subjects which opinion condemns. In receiving the Queen's commands, therefore, to protest against any declaration at variance with the honour of the Crown, and the unity of the empire, you are at the same time instructed to announce Her Majesty's gracious intention to look to the affectionate attachment of her people in North America, as the best security for permanent dominion.

It is necessary for this purpose that no official misconduct should be screened by Her Majesty's representative in the provinces; and that no private interests should be allowed to compete with the general good.

Your Excellency is fully in possession of the principles which have guided Her Majesty's advisers on this subject; and you must be aware that there is no surer way of earning the approbation of The Queen, than by maintaining the harmony of the executive with the legislative authorities.

While I have thus cautioned you against any declaration from which dangerous consequences might hereafter flow, and instructed you as to the general line of your conduct, it may be said that I have not drawn any specific line beyond which the power of the Governor on the one hand, and the privileges of the Assembly on the other, ought not to extend. But this must be the case in any mixed government. Every political constitution in which different bodies share the supreme power, is only enabled to exist by the forbearance of those among whom this power is distributed. In this respect the example of England may well be imitated. The sovereign using the prerogative of the Crown to the utmost extent, and the House of Commons exerting its power of the purse, to carry all its resolutions into immediate effect, would produce confusion in the country in less than a twelvemonth. So in a colony: the Governor thwarting every legitimate proposition of the Assembly; and the Assembly continually recurring to its power of refusing supplies, can but disturb all political relations, embarrass trade, and retard the prosperity of the people. Each must exercise a wise moderation. The Governor must only oppose the wishes of the Assembly where the honour of the Crown, or the interests of the empire are deeply concerned; and

Digitized by Google

the Assembly must be ready to modify some of its measures for the sake of harmony, and from a reverent attachment to the authority of Great Britain.

I have, &c.,
(Signed) J. RUSSELL.

DOWNING STREET,
16*th October*, 1839.

I am desirous of directing your attention to the tenure on which public offices in the gift of the Crown appear to be held throughout the British Colonies. I find that the governor himself and every person serving under him are appointed during the royal pleasure, but with this important difference. The Governor's commission is, in fact, revoked whenever the interests of the public service are supposed to require such a change in the administration of local affairs. But the commissions of all other public officers are very rarely indeed recalled, except for positive misconduct. I cannot learn that during the present or the two last reigns, a single instance has occurred of a change in the subordinate colonial officers, except in cases of death or resignation, incapacity or misconduct. This system of converting a tenure at pleasure into a tenure for life, originated probably in the practice, which formerly prevailed, of selecting all the higher class of colonial functionaries from persons who, at the time of their appointment, were resident in this country ; and, amongst other motives which afforded such persons a virtual security for the continued possession of their places, it was not the least considerable, that, except on those terms, they were unwilling to incur the risk and expense of transferring their residence to remote, and often to unhealthy climates. But the habit which has obtained of late years of preferring, as far as possible, for places of trust in the colonies, persons resident there, has taken away the strongest motive which could thus be alleged in favour of a practice to which there are many objections of the greatest weight. It is time, therefore, that a different course should be followed, and the object of my present communication is to announce to you the rules which will be hereafter observed on this subject in the province of Lower Canada.

Digitized by Google

You will understand, and will cause it to be made generally known, that hereafter the tenure of colonial offices held during Her Majesty's pleasure, will not be regarded as equivalent to a tenure during good behaviour; but that not only will such officers be called upon to retire from the public service as often as any sufficient motives of public policy may suggest the expediency of that measure, but that a change in the person of the governor will be considered as a sufficient reason for any alterations which his successor may deem it expedient to make in the list of public functionaries, subject of course to the future confirmation of the sovereign.

These remarks do not extend to judicial offices, nor are they meant to apply to places which are altogether ministerial, and which do not devolve upon the holders of them duties, in the right discharge of which the character and policy of the government are directly involved. They are intended to apply rather to the heads of departments than to persons serving as clerks or in similar capacities under them. Neither do they extend to officers in the service of the Lords Commissioners of the Treasury. The functionaries who will be chiefly, though not exclusively, affected by them, are the Colonial Secretary, the Treasurer, or Receiver-General, the Surveyor-General, the Attorney and Solicitor-General, the Sheriff or Provost Marshal, and other officers, who, under different designations from these, are entrusted with the same or similar duties. To this list must also be added the members of the council, especially in those colonies in which the Legislative and Executive Councils are distinct bodies.

The application of these rules to officers to be hereafter appointed will be attended with no practical difficulty. It may not be equally easy to enforce them in the case of existing officers, and especially of those who may have left this country for the express purpose of accepting the offices they at present fill. Every reasonable indulgence must be shown for the expectations which such persons have been encouraged to form. But even in these instances it will be necessary that the right of enforcing these regulations should be distinctly maintained in practice, as well as in theory, as often as the public good may clearly demand the enforcement of them. It may not be unadvisable to compensate any such officers for their

Digitized by Google

disappointment, even by pecuniary grants, when it may appear unjust to dispense with their services without such an indemnity.

I have, &c.,
(Signed) J. RUSSELL.

GOVERNMENT HOUSE, MONTREAL,
18*th November*, 1839.

MY LORD,

I have the honour to inform your Lordship, that having summoned the Special Council by proclamation to meet on Monday, the 11th instant, I then submitted to them the question of the re-union of the two provinces of Upper and Lower Canada, and solicited their opinion respecting it.

On Thursday, the 14th instant, I received from that body the address of which, and of my answer, I have the honour to enclose copies; and I likewise transmit an extract from the journals, from which your Lordship will learn their proceedings.

I beg your Lordship to remark, that the members composing the Special Council remain the same as during the administration of my predecessor. It may be necessary hereafter, in the exercise of my discretion, to make some alterations, with a view to increase the efficiency of that body; but I felt, that as the opinions of Her Majesty's Government in regard to the union are well known, it was extremely desirable that I should, if possible, submit the consideration of that important question to a Council in whose selection I had myself had no voice.

It appeared to me that to secure due weight in the mother country to the judgment of a body so constituted, it was indispensable to avoid even the possibility of an imputation that I had selected for its members those only whose opinions coincided with my own.

I had moreover every reason to believe, from the motives which guided my predecessor in his choice, that the Council contains a very fair representation of the state of feeling in the different districts of the province.

For these reasons I determined on making no alteration whatever; and it is with great satisfaction that I can now refer to the opinions of this body adopted almost unanimously. Their views as to the urgency of the union,

Digitized by Google

and the advantages likely to result from it to the province, are set forth in their address in terms so forcible as to leave me nothing to say with reference to their opinion. But I must add, that it is my decided conviction, grounded upon such other opportunities as I have enjoyed since my arrival in this country of ascertaining the state of public feeling, that the speedy adoption of that measure by Parliament is indispensable to the future peace and prosperity of this province.

All parties look with extreme dissatisfaction at the present state of government. Those of British origin, attached by feeling and education to a constitutional form of Government, although they acquiesced at the time in the establishment of arbitrary power, as a refuge from a yet worse despotism, submit with impatience to its continuance, and regret the loss, through no fault of their own, of what they consider as their birthright. Those of the French Canadians who remained loyal to their Sovereign and true to British connexion share the same feelings. Whilst among those who are less well-affected or more easily deceived, the suspension of all constitutional rights affords to reckless and unprincipled agitators a constant topic of excitement.

All parties, therefore, without exception, demand a change. On the nature of that change there exists undoubtedly some difference of opinion.

In a country so lately convulsed, and where passions are still so much excited, extreme opinions cannot but exist; and accordingly, while some persons advocate an immediate return to the former constitution of this province, others propose either the entire exclusion from political privileges of all of French origin, or the partial dismemberment of the province, with the view of conferring on one portion a representative system, while maintaining in the other a despotism.

I have observed, however, that the advocates of these widely different opinions have generally admitted them to be their aspirations, rather than measures which could practically be adopted, and have been unable to suggest any course except the union, by which that at which they aim, namely, constitutional government for themselves, could be permanently and safely established.

There exists, too, even amongst these persons, a strong and prevailing desire that the Imperial Legislature should

Digitized by Google

take the settlement of Canadian affairs at once into its own hands rather than that it should be delayed by a reference to individual opinions, or to the schemes which may be put forward by different sections of local parties.

The large majority, however, of those whose opinions I have had the opportunity of learning, both of British and French origin, and of those, too, whose character and station entitle them to the greatest authority, advocate warmly the establishment of the union, and that upon terms of perfect fairness, not merely to the two provinces, but to the two races within this province. Of the extent to which this feeling, with regard to the upper province, is carried, your Lordship will find a most conclusive proof in the resolution of the Special Council respecting the debt of Upper Canada. By this resolution a large sum, owing by that province on account of public works of a general nature, is proposed to be charged on the joint revenues of the United Province. Upon other details of the arrangement the same feeling prevails. It would be, however, useless for me to trouble your Lordship with respect to them, until I have had the opportunity of ascertaining the views and opinions entertained by the people of Upper Canada. If, however, as I trust, the principle of re-union should meet with their assent, I am of opinion that it can only be in consequence of demands of an unwarrantable character upon their part, that difficulty will arise in settling the principal terms.

I have, &c.,

(Signed) C. POULETT THOMSON.

ENCLOSURE 1.

To his Excellency the Right Honourable Charles Poulett Thomson, one of Her Majesty's most Honourable Privy Council, Governor-General of British North America, and Captain-General, and Governor-in-Chief, in and over the Provinces of Lower Canada and Upper Canada, Nova Scotia, New Brunswick, and the Island of Prince Edward, and Vice-Admiral of the same.

May it please your Excellency,

We, Her Majesty's dutiful and loyal subjects, the Special Council for the affairs of Lower Canada, at a meeting convened by your Excellency, under the authority

Digitized by Google

and in pursuance of the statute in this behalf provided, beg leave respectfully to return to your Excellency our thanks for your considerate care of the interests of this province, in having called our attention to Her Majesty's gracious message to both Houses of the Imperial Parliament, relative to the reunion of the provinces of Upper and Lower Canada, upon which important subject your Excellency has been pleased to desire the opinion of the Special Council.

In conformity with the desire of your Excellency, we have applied our deliberate consideration to the various complex interests and objects involved in the measure of reuniting the two provinces, and we most heartily express our humble gratitude to Her Majesty, for having granted her high sanction to a measure, which from our local knowledge and the experience we have had of the government of these provinces, and of their past and present political state, we deem to be essential to their future peace and welfare, and for the good, constitutional, and efficient government of them, under the protecting care and authority of Her Majesty, and the adoption of which we are intimately convinced has become of indispensable and urgent necessity.

In considering this contemplated measure, we have directed our attention to a few of the more prominent and important provisions, fit, as we conceive, to be embraced in it; and the views entertained by us on them, as well as on the measure itself, we have embodied in certain resolutions, which we have now the honour humbly to submit to your Excellency, as containing our opinion on the important subject, respecting which it has pleased your Excellency to consult us.

(Signed) J. STUART, Chairman.

SPECIAL COUNCIL, MONTREAL,
14th November, 1839.

SPECIAL COUNCIL,
Wednesday, *13th November*, 1839.

Resolved—That under existing circumstances, in order to provide adequately for the peace and tranquillity, and the good, constitutional, and efficient government of the provinces of Upper and Lower Canada,

Digitized by Google

the reunion of these provinces under one legislature, in the opinion of this Council, has become of indispensable and urgent necessity.

Resolved—That the declared determination of Her Majesty, conveyed in Her gracious message to Parliament to reunite the provinces of Upper and Lower Canada, is in accordance with the opinion entertained by this Council, and receives their humble and ready acquiescence.

Resolved—That among the principal enactments, which, in the opinion of this Council, ought to make part of the Imperial Act for reuniting the provinces, it is expedient and desirable that a suitable civil list should be provided for securing the independence of the judges, and maintaining the executive government in the exercise of its necessary and indispensable functions.

Resolved—That regard being had to the nature of the public debt of Upper Canada, and the objects for which principally it was contracted, namely, the improvement of internal communications, alike useful and beneficial for both provinces, it would be just and reasonable, in the opinion of this Council, that such part of said debt, as has been contracted for this object, and not for defraying expenses of a local nature, should be chargeable on the revenues of both provinces.[1]

Resolved—That the adjustment and settlement of the terms of the reunion of the two provinces, may, in the opinion of this Council, with all confidence be submitted to the wisdom and justice of the Imperial Parliament, under the full assurance that provisions of the nature of those already mentioned, as well as such others as the measure of reunion may require, will receive due consideration.

Resolved—That in the opinion of this Council, it is most expedient with a view to the security of Her Majesty's North American provinces, and the speedy cessation of the enormous expense now incurred by the parent state for the defence of Upper and Lower Canada, that the present temporary legislature of this province should, as soon as practicable, be succeeded by

[1] Especially the Welland Canal and that at Cornwall, which had been left unfinished through lack of funds.

Digitized by Google

a permanent legislature, in which the people of these two provinces may be adequately represented, and their constitutional rights exercised and maintained.

TORONTO,
20th November, 1839.

[1] I have succeeded in Lower Canada in far less time and with greater ease than I could have expected from Sir John Colborne's account to me of the state of feeling, especially in his own council. The fact is, that his council ran riot, and did not know how to proceed. I have given them my opinion strongly, at the same time that I expressed my willingness to hear and give due weight to theirs. This course has shortened business (for there is a strong wish to be guided by the Home Government), and produced unanimity. So far, therefore, as the Lower Province is concerned, I look upon the Union as settled. The decision, too, I have reason to know, gives the greatest satisfaction to the Province generally, and nearly all are prepared to accept the measure, if it can be carried through Parliament, with the utmost cordiality. The fact is, that all parties there are dead-sick of the present state of things, and desire a return to Constitutional Government. Of course the extremes have their different crotchets for arriving at this end. The ultra French desire an immediate return to the old Constitution. The ultra-British the disfranchisement of the French Canadians. But even they have been satisfied, I believe, by a little management and a good deal of firmness, that both were equally out of the question, and have now joined with the great mass who hold the middle opinion in favour of the Union measure. The *Canadien* and the *Montreal Herald* lie down together upon this point. In short, the unanimity is wonderful.

I have now the Upper Province to deal with, which will, I fear, be a more difficult matter. But I do not despair; and certainly, so far as all the real interests of the country are concerned, the Union is far more necessary to Upper Canada than to the other. If it were possible, the best thing for Lower Canada would be a

[1] In his biography we are not told to whom this and the following letter were addressed by Sydenham.

Digitized by Google

despotism for ten years more; for, in truth, the people are not yet fit for the higher class of self-government—scarcely indeed, at present, for any description of it; and by carrying oneself the measures which a House of Assembly will probably never carry, one might gradually fit them for both, and at all events, leave them an amount of good institutions which the United Legislature, when it came, could not destroy. But in Upper Canada the case, as it appears to me, is widely different. The state of things here is far worse than I had expected. The country is split into factions animated with the most deadly hatred to each other. The people have got into the habit of talking so much of *separation*, that they begin to believe in it. The Constitutional party is as bad or worse than the other, in spite of all their professions of loyalty. The finances are more deranged than we believed even in England. The deficit £75,000 a year, more than equal to the income. All public works suspended. Emigration going on fast *from* the province. Every man's property worth only half what it was. When I look to the state of Government, and to the departmental administration of the province, instead of being surprised at the condition in which I find it, I am only astonished it has been endured so long. I know that, much as I dislike Yankee institutions and rule, *I* would not have fought against them, which thousands of these poor fellows, whom the Compact call rebels, did, if it were only to keep up such a Government as they got. The excitement upon "Responsible Government" is great. Not that I believe the people understand what they are clamouring for by that word; but that they feel the extreme uneasiness of their situation, owing to financial embarrassments, and hate the dominant party in the Government with intense hatred. I do not wonder at the cry for Responsible Government, when I see how things have been managed.

Then the Assembly is such a House! Split into half a dozen different parties. The Government having *none*—and *no one man* to depend on! Think of a House in which half the members hold places, yet in which the Government does not command a single vote; in which the place-men generally vote against the Executive; and where there is no one to defend the Government when attacked, or to state the opinion or views of the Governor!

Digitized by Google

How, with a popular assembly, Government is to be conducted under such circumstances is a riddle to me. I am now more than ever satisfied that the Union affords the only chance of putting an end to the factions that distract the country; the only means of recruiting its finances by persuading Great Britain to help the Upper Canada Exchequer; the only means by which the present abominable system of government can be broken up, and a strong and powerful administration, both departmental and executive, be formed. And unless the people will assent to the general outline of it, and Parliament will then carry the details, upon which they would never agree, with a high hand, the province is lost. From all that I can hear or see, I would not give a year's purchase for our hold of it, if some great stroke is not given which shall turn men's thoughts from the channel in which they now run, and give a fresh impetus to public works, emigration, and the practical improvement of the country's resources.

It is indeed a pity to see this province in such a state. It is the finest country I ever knew, even what I have seen of it in a circle of thirty or forty miles from here; and by the accounts I receive the upper part is even superior. Lower Canada is not to be named in comparison. The climate, the soil, the water-power, and facilities of transport, finer than anything in North America.

Whether in their present state of violent excitement I shall be able to persuade the people to come to reasonable terms, I cannot venture to say; but I am sure it is the last and only chance. After having brought —— and —— to think that the French Canadians ought to have their full share of the representation, I shall not despair of any thing. But what I hear, and have as yet seen, of the House of Assembly, is not encouraging. If they are not willing, however, I shall appeal to the people without hesitation; for the state of things admits of no delay, and no half measures.

12th December, 1839.

I am not a bit afraid of the responsible government cry. I have already done much to put it down in its inadmissible sense; namely, the demand that the council

Digitized by Google

shall be responsible to the assembly, and that the governor shall take their advice, and be bound by it. In fact, this demand has been made much more *for* the people than *by* them. And I have not met with anyone who has not at once admitted the absurdity of claiming to put the council over the head of the governor. It is but fair, too, to say that everything has in past times been done by the different governors to excite the feelings of the people on this question. First, the executive council has generally been composed of the persons most obnoxious to the majority of the assembly. And next, the governor has taken extreme care to make every act of his own go forth to the public *on the responsibility* of the executive council. So the people have been carefully taught to believe that the governor is nobody, and the executive council the real power, and that by the governor himself. At the same time they have seen that power placed in the hands of their opponents. Under such a system it is not to be wondered at if our argument founded on the responsibility of the governor to the home government falls to the ground. I have told the people plainly that, as I cannot get rid of my responsibility to the home government, I will place no responsibility on the council; that they are *a council* for the governor to consult, but no more. And I have yet met with no "responsible government" man who was not satisfied with the doctrine. In fact there is no other theory which has common sense. Either the governor is the sovereign or the minister.. If the first, he may have ministers, but he cannot be responsible to the government at home, and all colonial government becomes impossible. He must therefore be the minister, in which case he cannot be under the control of men in the colony.

TORONTO,
16th September, 1840.

MY LORD,

I have the honour to acknowledge the receipt of a copy of the Act for re-uniting the Provinces of Upper and Lower Canada, and for the Government of Canada.

I have carefully perused the Act, and I observe with regret that some alterations have been made from the original plan which I transmitted, which will create difficulty and embarrassment here, especially the restrictions

Digitized by Google

introduced in the schedule for the Civil list, to which I before called your attention. There is nothing, however, in those changes which will, I believe, offer any insuperable obstacle to the working of the Act.

But it is with the deepest mortification that I find that the whole of the system for the establishment of local government has been omitted from the Bill, and that Her Majesty's Government and Parliament have contented themselves with the simple legislative re-union of the two Provinces, without providing any machinery by which they can be satisfactorily governed when united, or guarding against those evils which have been so severely felt from the absence of local government, and the consequent assumption by the assemblies of functions which did not properly belong to them, evils which will now be increased tenfold, after the two provinces shall have been placed under one government and one legislature.

I need scarcely recall to your Lordship's attention the circumstances connected with this measure. In the year 1839, when the affairs of the Canadas were under the consideration of Her Majesty's Government, and it was determined, upon the recommendation of the Earl of Durham, to re-unite the provinces, the Cabinet was so deeply impressed with the truth of his declaration, of the absolute necessity of the establishment by Parliament of a system of local government simultaneously with the measure for the union, that the plan then submitted and embodied in the Bill of that year, proceeded altogether upon that principle. Five districts were created apart from the central legislature, and the whole frame of the measure was erected in accordance with it. I need not either remind your Lordship that whilst this was the unanimous opinion of the Cabinet, those members of it who really took a deep interest in Canadian matters entertained so strongly the opinion of the necessity of enforcing this principle, that they would not have assented to any plan which involved its exclusion. The Bill of 1839 was withdrawn, and I was deputed to obtain the assent of the people and legislature of the two Canadas to the union, and to transmit a plan for effecting it, and for the future government of the two provinces. But in the instructions with which I was honoured with a view to my proceedings, I was emphatically told that one of the most important principles to be kept in view in any

Digitized by Google

measures for the future government of the Canadas was "the establishment of a system of local government by representative bodies freely elected in the various cities, and rural districts." "That after a full investigation of every other plan which has been suggested, Her Majesty's Government have not been able to discover in any but this the reasonable hope of a satisfactory settlement." "That attaching minor importance to the details," "they cannot depart from these principles."

Accordingly, in pursuance of the duty assigned to me, and having obtained the assent of the legislators of the two provinces to the terms of the union as they affected each in its relation to the other, or to the Crown, I transmitted such a plan for local government as, whilst it entirely established the principle for which Her Majesty's Government contended, and the adoption of which they and I deemed indispensable, altogether removed the defects of the scheme of last year, and was generally acceptable to the people. This plan received the cordial approbation of Her Majesty's Government. Your Lordship did not indeed deem it expedient to introduce to Parliament the clauses for carrying out the provisions for the system which I transmitted to you, but you did more, for you called upon Parliament to enable me to provide all the necessary machinery myself, subject to the leading principles which I had recommended.

Under such circumstances I should have been far less surprised to find the Union Bill abandoned altogether by the Government, than this most essential part of it withdrawn. I should certainly have infinitely preferred that the Bill should have been deferred, rather than deprived of what rendered it safe, or gave a fair chance of its being advantageous.

For if, before my better acquaintance with these colonies, the information which I could acquire from the reports of others and from general reasoning, had satisfied me of the necessity, to use the words of Lord Durham, "of making the establishment of good municipal institutions for the whole country a part of the colonial constitution;" the opportunity I have now had of studying the state of the British North American provinces—of observing the social condition of the people, and the working of the constitutions under which they have been governed—has convinced me that the cause of nearly all

Digitized by Google

the difficulty in the government of every one of them, is to be found in the absence of any well organized system of local government.

Owing to this, duties the most unfit to be discharged by the general legislature are thrown upon it; powers equally dangerous to the subject and to the Crown are assumed by the Assembly. The people receive no training in those habits of self-government which are indispensable to enable them rightly to exercise the power of choosing representatives in Parliament. No field is open for the gratification of ambition in a narrow circle, and no opportunity given for testing the talents or integrity of those who are candidates for popular favour. The people acquire no habits of self-dependence for the attainment of their own local objects. Whatever uneasiness they may feel—whatever little improvement in their respective neighbourhoods may appear to be neglected, affords grounds for complaint against the executive. All is charged directly upon the Government, and a host of discontented spirits are ever ready to excite these feelings. On the other hand, while the Government is thus brought directly in contact with the people, it has neither any officer in its own confidence in the different parts of these extended provinces from whom it can seek information, nor is there any recognized body enjoying the public confidence with whom it can communicate, either to determine what are the real wants and wishes of the locality, or through whom it may afford explanation.

Hence the readiness with which a demand for organic changes in the constitution has been received by the people.

Upon every consideration, therefore, I am of opinion that it was our duty to seize the first opportunity of supplying, through the Imperial Legislature, this capital omission in the constitution of these colonies, by the establishment of a good system of local government; and although the Act would, in fact, only have extended to the Canadas, I entertain no doubt that with such an authority before them, similar provisions would have been adopted by the legislatures in Nova Scotia and New Brunswick, where the defect is no less glaring.

But it may be said, why not trust to the provincial legislatures for the establishment of such institutions if they are needed?

Lord Durham has given the reply which certainly

Digitized by Google

appeared last year conclusive to Her Majesty's Government, and the correctness of which I can now confirm—"That it is vain to expect that such a sacrifice of power will be voluntarily made by a representative body;" and to this I may also add, that although, after a considerable time and much excitement, the people might compel their representatives to establish such a system, it is so easy to mislead them by representations against taxation; although no more is in fact intended than to give the *power* of taxation by themselves for their own local objects: and the argument in favour of its being the *duty* of the Government to find money for all their wants, is so specious and popular, that it would probably be some time before the people exerted themselves strenuously for this purpose; and when they did, I greatly doubt whether it would be possible to obtain those checks against abuse without which the system would fail; and which it was my object to introduce in the manner submitted by me to Her Majesty's Government and approved by them.

With reference, therefore, to the future interests of all Her Majesty's North American possessions, I deeply deplore the determination which has been taken; whilst with regard to the immediate and practical matter before me—namely, the government of the two Canadas under the Union Act, I confess that I am almost at a loss to conceive how it is proposed that it should be conducted.

Under the provisions of the Union Act, not only will the general affairs of a country 1,200 miles long be placed under the direction of one executive authority, thus distant from places where it may be called upon to act; but the local concerns of every district, and even village, through that vast extent of territory must be more or less under its superintendence, and that too in matters of which it can know little or nothing. The provision by which the initiative of all money votes is confined to the Governor, is a most valuable and important change in the constitution of these provinces; but it places a responsibility on the executive which can only be exercised under a system which relieves the public funds from demands for every little paltry expenditure, and confines their application to matters of general utility. As the Act now stands, the executive government will be called upon to propose every grant of £5 or £10 for a road or a

Digitized by Google

bridge 600 or 700 miles from the seat of government; of the merits of which it can know nothing, and of which it can learn nothing, except through representations which it has no opportunity of testing. If it acts, therefore, it will probably act wrong; if it does not, it is at once exposed to the reproach of having neglected the interest of the locality which it was bound to consider and advance. Whilst these duties are imposed upon it, too, no means whatever are afforded by which it can acquire information, or exercise the slightest control. In Upper Canada it is true that there is some machinery in the different districts now established by law, which will prevent the executive from being wholly powerless. There is an organization in each district of sheriffs, grand juries, &c., and the magistrates possess under the provincial laws certain powers which, although defective, still afford the means of going on. But in Lower Canada this is entirely wanting; and the division there for judicial purposes is of a character which affords no assistance whatever with respect to the rural districts of the province. The hand of the Government is entirely unknown and unfelt throughout them. If I had to seek for information from any place from 10 to 150 miles from Quebec or Montreal, I possess no means whatever of obtaining it, except from the authorities called into existence by the rebellion, and for whose permanency there is no security whatever. If the executive seeks to know the opinion of the people with regard to any improvement, there is no one to whom application can be made. In a word, every country district throughout the whole of the vast province of Lower Canada, is as completely cut off from any connection with the executive, as if it were on the other side of the Atlantic, and under a different form of government.

I certainly was impressed with the opinion that the existence of this state of things must be fully known to Her Majesty's government, and that after the deliberate judgment that had been arrived at last year, and the instructions I had received, it was, therefore, unnecessary for me to have repeated any statement, or have furnished any fresh argument in support of the principle of local government.[1]

[1] Writing at the same time to a friend, Lord Sydenham expressed himself still more forcibly: "Without a breakwater of this kind between the Central Government and the people, government with an Assembly

Digitized by Google

It remains for me, however, now only to consider the course which I can pursue under the determination which has been arrived at.

Entertaining so strongly as I do the conviction that the principal advantages intended by the Union Act are defeated by the omission of this part of the scheme, I confess that I should strongly incline to defer acting upon the powers conferred by it, and proclaiming the Union at all, until Parliament had again had an opportunity of reconsidering these clauses. But I must acknowledge that the delay which would thus arise, and the reopening the Canada question in England, where unfortunately, all that relates to this country is so little understood, would be probably attended with greater evils, and I cannot, therefore, take on myself the responsibility of recommending that course.

But failing this, it would be far more grateful to me, with the opinions I hold on this subject, that Her Majesty's Government should confide the attempt to work out this new measure to other hands than mine, and nothing but the anxiety which I feel to discharge

---

is impossible in Lower Canada, and most difficult in Upper Canada; and it is absurd to expect that any good system can or will be established by the Provincial Legislature, even if time admitted of its being proposed to them. No colonial Legislature will divest itself of the great power it now possesses of parcelling out sums of money for every petty local job; and although by the Union Bill the initiative of money votes will be confined to the Government, this provision will become null, because the moment the Executive is called upon to provide for all these local expenses, with the details of which it cannot be acquainted, it must renounce the task, and leave it in the hands of the members themselves. A distinct principle must be laid down, that *all* purely local expenses be borne by the localities themselves, settled and voted by them, and that only great works be paid for out of the provincial funds.

". . . Since I have been in these provinces, I have become more and more satisfied that the capital cause of the misgovernment of them is to be found in the absence of local government, and the consequent exercise by the Assembly of powers wholly inappropriate to its functions. Members are everywhere chosen only with reference to the extent of job for their particular district which they can carry. Whoever happens to lead a party in the House, of twelve or fourteen members, may at once obtain a majority for his political views by jobbing with other members for votes upon them, or, by rejecting their jobs as the penalty of refusal, oust them from their seats. . . . The establishment of municipal government by Act of Parliament is as much a part of the intended scheme of government for the Canadas as the union of the two Legislatures, and the more important of the two."—*Life*, pp. 193-4.

Digitized by Google

my duty to the Queen to the last, and the deep interest which I now take in what concerns these provinces, would lead me to attempt the task under circumstances which I consider almost hopeless.

I am willing, however, if required, to yield to that consideration, and, above all, to the feelings of the people here, of whose confidence I have lately received so many and such flattering proofs, and I shall endeavour to work out the Act as it stands, by such means as I possess.

For Upper Canada it is out of my power to make any provision. In Lower Canada, however, I shall, with the assistance of the Special Council, provide such a system as may supply a part at least of what was intended to be given under the provisions of the Bill; at all events to the extent which is necessary to carry out fully the different ordinances of that body which have already passed, and provide for some local organization for the wants of the country districts. The Council will, under any circumstances, meet the middle of next month, to complete its labours preparatory to the Union; and I shall then propose to them measures to this effect.

I shall then be able to proclaim the Union at the earliest period at which, looking to the time when the elections could be held, and to the financial concerns of both provinces, it would be possible, namely at the beginning of January. The elections will take place as soon afterwards as they conveniently can, and when the united Parliament meets, I shall propose to them, on the part of the Government, to adopt for the whole province a system of local government which will already have been in operation here, with such additions as may appear necessary.[1]

[1] Both in Upper and in Lower Canada Sydenham carried out the plan here outlined, and on August 28, 1841, was able to write to his brother: "My last feat has been to carry the Municipal District Bill for Upper Canada, word for word after my own Ordinance for the Lower Province; thereby not only giving the complement to the Union (for you know I always declared that without such institutions the Union could not work), but setting up my own particular legislation by the sanction of the United Parliament. . . . But the trouble I have had to do this has completely justified all my anticipations of the next to impossibility of our getting such a measure through a Provincial Assembly, and the utter hopelessness of the effort, but for the course which I followed of dictating it, whilst I was dictator, for one part of the province first. One party hated the measure because it was to give power to the people; another because it placed that power under wholesome control by the Crown; a third because it deprived the

Digitized by Google

DOWNING STREET,
25th October, 1840.

MY LORD,

I have received your Lordship's Despatch, No. 160, of the 16th September, pointing out the injurious consequences which you anticipate from the departure in the Act for the reunion of Canada from the Bill which you had proposed, and more particularly from the omission of legislative provision for local government.

Partaking as I do in the general opinions which you have expressed on this subject, I nevertheless could not supply the want of Canadian authority for the municipal clauses, which induced Sir R. Peel and Lord Stanley, friendly as they were to the Bill, to support their omission. I may also observe that Mr. Gillespie and others in this country well acquainted with Canada, concurred in the objections made to those clauses in the House of Commons.

The benefit of municipal government being so great, it is difficult to conceive that the legislature of the United Province can long resist the introduction of a system so useful to the interests, and so directly tending to increase the power of the people, when recommended warmly and repeatedly by the executive of the province and supported by the Crown.

I have, &c.,
(Signed) J. RUSSELL.

GOVERNMENT HOUSE, KINGSTON,
25th June, 1841.

MY LORD,

I have the honour to transmit to your Lordship herewith the copy of the Speech with which, on the 15th instant, I opened the Session of the Legislature,

---

members of the Assembly of all their past power of jobbing. But I beat them all three, to the utter astonishment of the spectators; and at last carried my work—the Bill, the whole Bill, and nothing but the Bill—by a majority of forty-two to twenty-nine."

Under Sydenham's system municipal officers were largely nominated by the Crown. In 1845 this was changed in Lower Canada, and an elective system set up. In 1849 the Municipal Corporations Act did the same for Upper Canada. These Acts are still the foundation of the municipal systems of the provinces of Quebec and Ontario. (See *University of Toronto Studies : History and Economics*, vol. ii., No. 2; *Municipal Government in Ontario*, by Adam Shortt.)

Digitized by Google

together with copies of the addresses presented to me in answer by both houses, and of my replies to those Addresses.[1] The Legislature had been summoned, as your Lordship is aware, for the 14th instant; but as it was necessary, in compliance with the 33rd clause of the Union Act, that the Assembly should, in the first instance, proceed to elect their Speaker, I abstained, in conformity with the opinion of my Law Advisers, from meeting the Parliament until that preliminary had been completed. This departure from former practice was, as your Lordship will perceive, the necessary result of that provision of the Union Act which, contrary to the Parliamentary usage in England, invests the Assembly with the absolute power of selecting their Speaker without reference to the Executive Authority.

I have, &c.,
(Signed) SYDENHAM.

HONOURABLE GENTLEMEN OF THE LEGISLATIVE COUNCIL, AND GENTLEMEN OF THE HOUSE OF ASSEMBLY,

I have deemed it right to assemble you at the earliest period which the circumstances of the Province and the duties imposed upon me by the Imperial Act for the Union of the Canadas, under which this Legislature is constituted, have admitted; and it is with sincere satisfaction that I now meet you to deliberate on the great and important interests committed to our charge.

A subject of Her Majesty, an inhabitant of this Province, has been forcibly detained in the neighbouring States charged with a pretended crime. No time was lost by the Executive of this Province in remonstrating against this proceeding, and provision was made for insuring to the individual the means of defence pending the further action of Her Majesty's Government. The Queen's Representative at Washington has since been instructed to demand his release. Of the result of that demand I am not yet apprised, but I have the Queen's commands to assure her faithful subjects in Canada of her Majesty's

[1] The speech is given below. The addresses, which merely expressed willingness to carry out the reforms proposed, are omitted.

Digitized by Google

fixed determination to protect them with the whole weight of her power.[1]

Arrangements were completed during the course of last summer by which, under the directions of the Treasury, the rates of Postage between all parts of this Colony and the United Kingdom were greatly reduced; and a more speedy and regular conveyance of letters between different parts of this Province has since been established by arrangements made by the Deputy Postmaster-General under my directions. A commission has been appointed by me to inquire into and report upon the Post-office system of British North America, and I confidently anticipate that the result of its labours will be the establishment of a plan securing improvements in the internal communication by post within the Colony equal to those which we have already obtained in the communication with the mother-country.

Many subjects of deep importance to the future welfare of the Province demand your early attention, upon some of which I have directed bills to be prepared, which will be submitted for your consideration.

Amongst them, first in importance at the present juncture of affairs is the adoption of measures for developing the resources of the Province by well-considered and extensive public works. The rapid settlement of the country—the value of every man's property within it—the advancement of his future fortunes are deeply affected by this question. The improvement of the Navigation from the shores of Lake Erie and Lake Huron to the Ocean

[1] After his abortive rebellion, William Lyon Mackenzie fled to the United States, and gathered a band of ruffians, who entrenched themselves on Navy Island, in the Niagara River, where they set up a provisional Government. On the night of December 29, 1837, a small American steamer, the *Caroline*, which was supplying them with provisions, was attacked by Canadian volunteers while at anchor on the American side, captured, and set on fire. In the struggle an American was killed. This naturally aroused great excitement in the United States, and the British and American Governments came within measurable distance of war.

On November 12, 1840, Alexander McLeod, a Canadian citizen, was arrested while on a visit to the State of New York, and charged with complicity in this so-called "murder and arson." After spending some time in prison, McLeod was put on trial in October, 1841, and acquitted. Under the circumstances, his hanging would have meant war. (See Dent, *The Last Forty Years*, vol. i., pp. 164 78; Scrope, *Life of Lord Sydenham*, pp. 224-6.)

Digitized by Google

—the establishment of new internal communications in the inland districts are works requiring a great outlay, but promising commensurate returns. To undertake them successfully large funds will undoubtedly be required, and the financial condition of the Province, as it stands at present, would seem to forbid the attempt. But I have the satisfaction of informing you that I have received authority from Her Majesty's government to state that they are prepared to call upon the Imperial Parliament to afford their assistance towards these important undertakings. In the full belief that peace and tranquillity will be happily re-established in this province, under the constitution settled by Parliament, and that nothing but a relief from its most pressing difficulties is wanting to its rapid advancement to prosperity, they will propose to Parliament, by affording the guarantee of the Imperial Treasury for a loan to the extent of no less than a million and a half sterling, to aid the Province, for the double purpose of diminishing the pressure of the interest on the public debt, and of enabling it to proceed with those great public undertakings whose progress during the last few years has been arrested by the financial difficulties. I shall direct a measure to be submitted to you embracing a plan for this purpose, and I shall lay before you, for your information and that of the people of Canada, extracts from the despatches which convey to me this most gratifying assurance.

In immediate connexion with the outlay of capital upon public works is the subject of emigration and the disposal and settlement of the public lands. There exist within this Province no means so certain of producing a healthy flow of immigration from the mother-country, and of ultimately establishing the immigrant as a settler and proprietor within the Colony, as the power of affording sure employment for his labour on his first arrival. The assistance of Parliament for the public works which may be undertaken here, will in great measure provide for this; but with a view further to aid immigration, I am authorized to declare to you that Her Majesty's government are prepared to assist in facilitating the passage of the immigrant from the port at which he is landed to the place where his labour may be made available, and that a vote of money for this purpose will be proposed to the Imperial Parliament. The conditions which Her Majesty's govern-

Digitized by Google

ment attach to this measure will be submitted to you at the same time that I shall draw your attention to a scheme for the settlement and disposal of the public funds.

It appears highly desirable that the principle of local self-government, which already prevails to some extent throughout that part of the Province which was formerly Upper Canada, should receive a more extended application there, and that the people should exercise a greater degree of power over their own local affairs. I have directed a measure upon this subject to be submitted to you, and I solicit your earnest attention to the establishment of such a form of local government for those districts of the Province which are unprovided with it, as may ensure satisfaction to the people whilst it preserves inviolate the prerogative of the Crown, and maintains the administration of justice pure from party and popular excitement.

A due provision for the education of the people is one of the first duties of the State, and in this Province, especially, the want of it is grievously felt. The establishment of an efficient system by which the blessings of instruction may be placed within the reach of all is a work of difficulty; but its overwhelming importance demands that it should be undertaken. I recommend the consideration of that subject to your best attention, and I shall be most anxious to afford you in your labours all the co-operation in my power. If it should be found impossible so to reconcile conflicting opinions as to obtain a measure which may meet the approbation of all, I trust that at least steps may be taken by which an advance to a more perfect system may be made, and the difficulty under which the people of this Province now labour may be greatly diminished, subject to such improvements hereafter as time and experience may point out.[1]

GENTLEMEN OF THE HOUSE OF ASSEMBLY,

The financial accounts of the Province will be immediately laid before you, and I shall direct the estimates for the public service to be submitted to you with

[1] Primary and secondary education were at this time in a very bad state, especially in Lower Canada. Since the appointment in 1844 of the Rev. Egerton Ryerson as Superintendent of Education in Upper Canada, and in 1855 of Mr. P. J. O. Chauveau to the same position in the Lower Province, steady progress has been made.

Digitized by Google

the least possible delay. I rely upon your co-operation in the financial measures which it will be my duty to propose to you for taking advantage of the assistance which her Majesty's Government propose to afford, and for carrying into effect the public improvements which are deemed most desirable. I shall earnestly endeavour that whatever you may appropriate for this latter purpose shall be economically employed and rendered effective.[1]

HONOURABLE GENTLEMEN AND GENTLEMEN,

In your wisdom and prudence I confide for the regulation of the different important matters which must necessarily come before you. Canada, united under a constitution which the Imperial Legislature has framed with an earnest desire for the welfare of this portion of the British Empire, cannot fail to prosper under prudent and sage counsels. The generous aid which I have already announced to you, the determination which I am also empowered to state upon the part of the Government to devote annually a large sum for the military defences of the Province—the fixed and settled determination which I have the Queen's commands to declare that her North American possessions shall be maintained at all hazards as part of Her Empire, are pledges of the sincerity with which the mother-country desires to promote the prosperity of Canada, and to assist in the well-working of the new institutions which it has established. The eyes of England are anxiously fixed upon the result of this great experiment. Should it succeed, the aid of Parliament in your undertakings, the confidence of British capitalists in the credit you may require from them, the security which the British people will feel in seeking your shores, and establishing themselves upon your fertile soil, may carry improvement to an unexampled height. The rapid advance of trade and of immigration within the last eighteen months, afford ample evidence of the effects of tranquillity in restoring confidence and promoting prosperity. May no dissensions mar the flattering prospect which is open before us. May your efforts be steadily

[1] Up to this time public works in Upper Canada had been carried out by a separate Commission for each enterprise—Commissions sometimes corrupt and nearly always unskilled. Under Sydenham a President of the Board of Works, with a seat in the Executive Council, was appointed.

Digitized by Google

directed to the great practical improvements of which the Province stands so much in need, and under the blessing of that Providence which has hitherto preserved this portion of the British dominions, may your counsels be so guided as to ensure to the Queen attached and loyal subjects, and to United Canada a prosperous and contented people.

Digitized by Google

RESPONSIBLE GOVERNMENT

II

THE compromise maintained by Sydenham was rudely disturbed during the term of office of Sir Charles Metcalfe. How far did the relation of the Governor to his Executive Council resemble that of the British Sovereign to her constitutional advisers, and how far was the Governor responsible to the Colonial Office, and the functions of the Council merely advisory? On this question the Governor and his Council were in direct opposition. Metcalfe's views on the point are clearly stated in his reply made toward the end of 1843, to an address from the Warden and Councillors of the Gore District of Upper Canada:

With reference to your views of responsible government, I cannot tell you how far I concur in them without knowing your meaning, which is not distinctly stated.

If you mean that the Governor is to have no exercise of his own judgment in the administration of the Government, and is to be a mere tool in the hands of the Council, then I totally disagree with you. That is a condition to which I never can submit, and which Her Majesty's Government, in my opinion, can never sanction.

If you mean that every word and deed of the Governor is to be previously submitted for the advice of the Council, then you propose what, besides being unnecessary and useless, is utterly impossible, consistently with the due despatch of business.

If you mean that the patronage of the Crown is to be surrendered for exclusive party purposes, to the Council, instead of being distributed to reward merit, to meet just

Digitized by Google

claims, and to promote the efficiency of the public service, then we are again at issue. Such a surrender of the prerogative of the Crown is, in my opinion, incompatible with the existence of a British Colony.[1]

If you mean that the Governor is an irresponsible officer, who can, without responsibility, adopt the advice of the Council, then you are, I conceive, entirely in error. The undisputed functions of the Governor are such that he is not only one of the hardest-worked servants of the colony, but also has more responsibilities than any other officer in it. He is responsible to the Crown and Parliament and the people of the mother-country for every act that he performs, or suffers to be done, whether it originates with himself or is adopted on the advice of others; he could not divest himself of that responsibility by pleading the advice of the Council. He is also virtually responsible to the people of this colony, and practically more so than even to the mother-country; every day proves it, and no resolutions can make it otherwise.

But if, instead of meaning any of the above-stated impossibilities, you mean that the Government should be administered according to the well-understood wishes and interests of the people; that the Resolutions of September, 1841, should be faithfully adhered to;[2] that it should be competent to the Council to offer advice on all occasions, whether as to patronage or otherwise, and that the Governor should receive it with the attention due to his constitutional advisers, and consult with them on all cases of adequate importance; that there should be a cordial co-operation and sympathy between him and them; that the Council should be responsible to the Provincial Parliament and people; and that when the acts of the Governor are such as they do not choose to be responsible for, they should be at liberty to resign; then, I entirely agree with you, and see no impracticability in carrying on responsible government in a colony on that footing, provided that the respective parties engaged in the undertaking be guided by moderation, honest purpose, common sense and equitable minds, devoid of party spirit.

[1] It was on a question of patronage that the final breach between Metcalfe and his Council had occurred.

[2] Cited in Houston, *op. cit.*, pp. 303-4; and, with one omitted, in Dent, *Last Forty Years*, i. 149-50, and Scrope, *op. cit.*, 259-60.

Digitized by Google

Metcalfe's resignation of the Governor-Generalship preceded by a few months the fall of the Conservative Ministry of Sir Robert Peel, and the accession of Lord John Russell, with Earl Grey as Secretary of State for War and for the Colonies. The history of the colonial policy of that Administration has been told by its chief.[1] It was decided to give to the colonies responsible government in the fullest sense of the words. The principle was laid down that "this country has no interest whatever in exercising any greater influence in the internal affairs of the colonies, than is indispensable either for the purpose of preventing any one colony from adopting measures injurious to another, or to the Empire at large."[2]

In Nova Scotia the controversy had become as acute as in Canada, and an attempt of the Lieutenant-Governor, Lord Falkland, to imitate the policy of Sydenham had not met with success. To his successor were sent instructions, in which the principles of responsible government are stated by the Colonial Office with the greatest clearness, and which the good sense of Sir John Harvey carried out with a tact which made the period of transition brief and comparatively uneventful.

Earl Grey to Lieutenant-Governor Sir John Harvey, K.C.B.

Downing Street,
8 *November*, 1846.

I have received your Despatch of the 15th September, marked "Private and Confidential," in which you communicate to me your views upon the state of affairs which you have found on arriving in Nova Scotia.

Circumstances prevented me from answering your Despatch, as you wished me to have done, by the packet

[1] *The Colonial Policy of Lord John Russell's Administration*, by Earl Grey (London: 1853, two vols.).
[2] Earl Grey, *op. cit.*, i. 17.

Digitized by Google

which left England on the 3d instant; but the interval which has since elapsed has enabled me to devote more time to the consideration of the questions which you have brought under my notice than the brief space between the arrival and the departure of the North American packet would have allowed me to do.

I perceive, from your representation of the position of affairs in Nova Scotia, that there are questions to be determined in respect to the government of that province of no ordinary difficulty, and that it is of the utmost importance that the first measures of your administration should be preceded by the most careful deliberation. The knowledge which I possess of the local politics of Nova Scotia is at present too limited to enable me, with confidence in my own judgment, to give you any positive and detailed directions as to the course which circumstances may require you to adopt in the present conjuncture; but though it is out of my power to give you such instructions, there are certain general principles which ought, as I conceive, to govern your conduct in this and in similar cases; and which, as they admit of being stated, ought, I think, to be communicated to you for your guidance.

I shall advert first to the important topic of the composition of the Legislative Council. In making appointments to this body, it ought undoubtedly to be the object of the administrator of the Government so to compose it as to make it fairly represent the opinion of the majority of the intelligent members of the community; but supposing the selection of the present members to have been ill-advised, and that the Council in consequence is not in harmony with public opinion, the question arises, what is then the proper course to be adopted? Under such circumstances there are two considerations to which it is necessary to advert. First, that it is impossible to allow the Legislative Council to obstruct permanently the passing of measures called for by public opinion, and sent up by the popular branch of the Legislature. Secondly, that it is a serious evil to be compelled to make an addition to the members of this body for the purpose of changing the character of the majority; since each such addition creates both a precedent and a necessity for a similar and perhaps larger addition whenever a change in public feeling gives the

Digitized by Google

ascendancy to a new party in the assembly. It is difficult to reconcile these almost conflicting considerations, but this, in my opinion, may be attempted with the greatest hopes of success, by adopting as a rule that an addition is not to be made to the Legislative Council with a view to changing the character of the majority, except under circumstances of clear and obvious necessity. An anticipation that public business will be impeded because there is a majority in the Legislative Council attached to the political party which has not the confidence of the colony is insufficient to justify the appointment of additional members. Practical inconvenience must have actually arisen, and to a serious extent, before resort can with propriety be had to any measure for increasing the number of the Council. If that body be found obstructing pertinaciously the progress of public business, and the passing of laws which public opinion demands, an addition to it would then be felt to be a just and necessary measure, and would not excite the same indignation, on the part even of those against whom it might be directed, as would be the case if adopted on lighter grounds; while the probability is that the members of the Legislative Council, knowing that if it should become necessary this measure must ultimately be resorted to, will shrink from creating the necessity by obstinately opposing themselves to the real opinion of the intelligent classes of the community.

* * * * *

I come now to the second question which you have submitted to me in your Despatch, namely, the propriety of dissolving the present House of Assembly.

* * * * *

I am of opinion that under all the circumstances of the case, the best course for you to adopt is to call upon the members of your present Executive Council to propose to you the names of the gentlemen whom they would recommend to supply the vacancies, which I understand to exist, in the present Board. If they should be successful in submitting to you an arrangement to which no valid objection arises, you will of course continue to carry on the government through them, so long as it may be possible to do so satisfactorily, and as they possess the necessary support from the Legislature. Should the present Council fail in proposing to you an arrangement

Digitized by Google

which it would be proper for you to accept, it would then be your natural course, in conformity with the practice in analogous cases in this country, to apply to the opposite party, and should you be able, through their assistance, to form a satisfactory Council, there will be no impropriety in dissolving the Assembly upon their advice; such a measure, under those circumstances, being the only mode of escaping from the difficulty which would otherwise exist of carrying on the government of the province upon the principles of the constitution.[1]

The object with which I recommend to you this course, is that of making it apparent that any transfer which may take place of political power from the hands of one party in the province to those of another is the result not of an act of yours but of the wishes of the people themselves, as shown by the difficulty experienced by the retiring party in carrying on the government of the province according to the forms of the constitution. To this I attach great importance; I have therefore to instruct you to abstain from changing your Executive Council until it shall become perfectly clear that they are unable, with such fair support from yourself as they have a right to expect, to carry on the government of the province satisfactorily, and command the confidence of the Legislature.

Of whatsoever party your Council may be composed, it will be your duty to act strictly upon the principle you have yourself laid down in the memorandum delivered to the gentlemen with whom you have communicated, that, namely, "of not identifying yourself with any one party," but instead of this, "making yourself both a mediator and a moderator between the influential of all parties." In giving, therefore, all fair and proper support to your council for the time being, you will carefully avoid any acts which can possibly be supposed to imply the slightest personal objection to their opponents, and also refuse to assent to any measures which may be proposed to you by your council which may appear to you to involve an improper exercise of the authority of the Crown for party rather than for public objects. In exercising, however, this power of refusing to sanction measures which may be submitted to you by your council, you must recollect

[1] For the political incidents of the time, see Longley, *op. cit.*, pp. 103–118.

Digitized by Google

that this power of opposing a check upon extreme measures proposed by the party for the time in the government, depends entirely for its efficacy upon its being used sparingly, and with the greatest possible discretion. A refusal to accept advice tendered to you by your council is a legitimate ground for its members to tender to you their resignation, a course they would doubtless adopt should they feel that the subject on which a difference had arisen between you and themselves was one upon which public opinion would be in their favour. Should it prove to be so, concession to their views must, sooner or later, become inevitable, since it cannot be too distinctly acknowledged that it is neither possible nor desirable to carry on the government of any of the British provinces in North America in opposition to the opinion of the inhabitants.

Clearly understanding, therefore, that refusing to accede to the advice of your council for the time being upon a point on which they consider it their duty to insist, must lead to the question at issue being brought ultimately under the decision of public opinion, you will carefully avoid allowing any matter not of very grave concern, or upon which you cannot reasonably calculate upon being in the end supported by that opinion, to be made the subject of such a difference. And if, unfortunately, such a difference should arise, you will take equal care that its cause and the grounds of your own decision are made clearly to appear in written documents capable of being publicly quoted.

The adoption of this principle of action by no means involves the necessity of a blind obedience to the wishes and opinions of the members of your Council; on the contrary, I have no doubt that if they see clearly that your conduct is guided, not by personal favour to any particular men or party, but by a sincere desire to promote the public good, your objections to any measures proposed will have great weight with the Council, or should they prove unreasonable, with the Assembly, or, in last resort, with the public.

Such are the general principles upon which the constitutions granted to the North American colonies render it necessary that their government should be conducted. It is, however, I am well aware, far easier to lay down these general principles than to determine in any parti-

Digitized by Google

cular case what is that line of conduct which an adherence to them should prescribe. In this your own judgment and a careful consideration of the circumstances in which you are placed must be your guide; and I have only, in conclusion, to assure you that Her Majesty will always be anxious to put the most favourable construction upon your conduct in the discharge of the arduous duties imposed upon you by the high situation you hold in Her service.

EARL GREY TO LIEUT.-GOVERNOR SIR JOHN HARVEY, K.C.B.

DOWNING STREET,
31 *March*, 1847.

SIR,

I have already acknowledged the receipt of your Despatch of the 2d February, enclosing two letters to yourself from your Executive Council, and I now propose to communicate the conclusions at which I have arrived after that attentive consideration which I have felt due, as well to the intrinsic merits of the views stated by your advisers, as to the respectable source from which the statement emanates.

In doing so, it will be convenient that I should at the same time advert to the correspondence which, soon after your assumption of the government of Nova Scotia, you had with Mr. Howe and his friends.

Upon a careful comparison of these very able papers, in which the members of your Council and their political opponents have stated their respective views as to the manner in which the Executive Government of Nova Scotia ought to be conducted, I am led to the conclusion that there is not in reality so wide a difference of principle between the conflicting parties as would at first sight appear to exist, and that it may not be impossible to chalk out a system of administration to be hereafter adopted, to which, without the slightest sacrifice of consistency, both might assent.

On the one hand, I find that the members of your Council declare that they "desire in no degree to weaken the responsibility of the Provincial Government to the Legislature," and I gather from the general tenor of their papers of the 28th and 30th of January, that they are aware that, in the present state of affairs, and of public

Digitized by Google

opinion in Nova Scotia, it is necessary that the Governor of the province should, in administering its affairs, have the advice and assistance of those who can command the confidence of the Legislature, and more especially of that branch of the Legislature which directly represents the people.

On the other hand, I can hardly doubt that the gentlemen of the opposite party who have insisted so strongly upon the necessity of what is termed "responsible government," would admit the justice and importance of many of the arguments which have been used, in order to show the danger and inconvenience of making the general tenure of offices in the colonial service to depend upon the fluctuations of political contests in the Assembly. I am the more convinced that the gentlemen of the opposition will recognise the force of these arguments, because I observe in the various papers in which they have stated their views, frequent references, either direct or implied, to the practice of this country, as that which affords the best model for imitation in laying down rules as to the manner in which the government of Nova Scotia should be carried on. Now there is scarcely any part of the system of government in this country which I consider of greater value than that, which though not enforced by any written law, but deriving its authority from usage and public opinion, makes the tenure of the great majority of officers in the public service to depend upon good behaviour. Although, with the exception of those who hold the higher judicial situations, or situations in which judicial independence has been considered to be necessary, the whole body of public servants in the United Kingdom hold their offices technically during the pleasure of the Crown, in practice all but the very small proportion of offices which are distinguished as political, are held independently of party changes, nor are those who have once been appointed to them ever in point of fact removed, except in consequence of very obvious misconduct or unfitness. Thus, in fact, though the legal tenure, "during good behaviour," is rare, tenure during good behaviour, in the popular sense of the term, may be said to be the general rule of our public service.

The exception is in the case of those high public servants whom it is necessary to invest with such discretion as really to leave in their hands the whole direction of the

Digitized by Google

policy of the empire in all its various departments. Such power must, with a representative government, be subject to constant control by Parliament, and is therefore administered only by such persons as from time to time enjoy the confidence of Parliament as well as of the Crown. These heads of departments, or Ministers, together with their immediate subordinates who are required to represent or support them in Parliament, are almost invariably members of one or other House, and hold their offices only as long as they enjoy the confidence of Parliament.

Though it is not without some inconveniences, I regard this system as possessing upon the whole very great advantages. We owe to it that the public servants of this country, as a body, are remarkable for their experience and knowledge of public affairs, and honourably distinguished by the zeal and integrity with which they discharge their duties, without reference to party feeling; we owe to it also, that as the transfer of power from one party in the State to another is followed by no change in the holders of any but a few of the highest offices, political animosities are not in general carried to the same height, and do not so deeply agitate the whole frame of society as in those countries in which a different practice prevails. The system with regard to the tenure of office which has been found to work so well here, seems well worthy of imitation in the British American Colonies, and the small population and limited revenue of Nova Scotia, as well as the general occupation and social state of the community, are, in my opinion, additional reasons for abstaining, so far as regards that province, from going further than can be avoided, without giving up the principle of executive responsibility, in making the tenure of offices in the public service dependent upon the result of party contests. In order to keep the Executive Government in harmony with the Legislature, it is doubtless necessary that the direction of the internal policy of the colony should be entrusted to those who enjoy the confidence of the Provincial Parliament, but it is of great moment not to carry the practice of changing public officers further than is absolutely necessary for the attainment of that end, lest the administration of public affairs should be deranged by increasing the bitterness of party spirit, and subjecting the whole machinery of Government to perpetual change and uncertainty.

Digitized by Google

In the practical application of these views, there will, I am aware, be room for considerable difference of opinion.

In this, as in all questions of classification, varying circumstances and the various views taken by different men, will give rise to discussions and occasional alterations with respect to particular offices. Your acquaintance with what has passed, and is passing in the mother country, will suggest to you instances in which the question has been raised, whether a particular office should or should not be a Parliamentary office; and some in which different offices have been deliberately removed from the one into the other class.

The question how many of the public officers in Nova Scotia ought to be regarded as political, is one to be determined on the general principles I have before laid down, and with reference to various considerations arising from the peculiar exigencies of the public service, and the finances and social state of the colony. The practical end of responsible government would be satisfied by the removability of a single public officer, provided that through him public opinion could influence the general administration of affairs. Without quite assenting to the too modest estimate which your present Council have given of the resources of the province, I admit that the smallness of the community, its want of wealth, and the comparative deficiency of a class possessing leisure and independent incomes, preclude it from, at present, enjoying a very perfect division of public employments. Small and poor communities must be content to have their work cheaply and somewhat roughly done. Of the present members of your Council, the Attorney-general and Provincial Secretary, to whom the Solicitor-general should perhaps be added, appear to me sufficient to constitute the responsible advisers of the Governor. The holders of these offices should henceforth regard them as held on a political tenure. And, with a view to that end, the Provincial Secretary should be prepared, in the event of any change, to disconnect from his office that of the clerkship of the Council, which seems to be one that should on every account be held on a more permanent tenure.[1]

[1] In 1848, on the coming into office in Nova Scotia of the Liberal Party, a Cabinet of nine responsible advisers was considered necessary. Earl Grey made some objections, but finally gave way. (See Longley, *op. cit.*, pp. 110–112; Howe, *op. cit.*, pp. 569–578.)

Digitized by Google

It is possible that in the event of any change being rendered necessary by the course of events in the Provincial Parliament, the party succeeding to power might insist on increasing this number of political offices, by adding to the list of those to be so regarded. In case such a question should arise, I must leave it to your discretion, on a view of various local and temporary circumstances, which I am unable at present to appreciate, to form your own decision with respect to any such demand. I should feel no objection to somewhat increasing the number of political offices (for instance, by appointing a financial secretary and a responsible chief of the department of public lands and works), should the expense of doing so, without injustice to those now in the public service, be found to be not more than the colonial revenue would conveniently bear. But I rely on your using your influence to resist that disposition, which a party succeeding to power often exhibits, to throw open the various offices of emolument to their friends, without sufficient regard to the mischiefs thereby permanently entailed on the public service. And it is but due to what I have seen of the conduct of the principal advocates of responsible government in Nova Scotia, to express my reliance on their public spirit and sober estimate of their country's position and interests, as the most effectual safeguard against any abuse of power.

There is another safeguard which, even with the less considerate members of any party, you will, I think, find sufficient to protect the public interests against any great disposition unnecessarily to place offices hitherto held on what has practically been a tenure of good behaviour, on one of a more precarious nature. However desirous the people of Nova Scotia may be to establish the principle of responsible government, they would, I feel assured, shrink from effecting any reform, however just or necessary, at the cost of injustice to individuals. Now, when individuals have engaged in the public service under a belief, sanctioned by custom, that they obtained a tenure of their offices during good behaviour, it would be most unjust to change that tenure to one of dependence on a parliamentary majority, without ensuring them a provision that would make up for the loss of official income. I think that the consideration that the grasping at any particular office would necessitate the provision of an

Digitized by Google

adequate pension for its occupant, will be a salutary check on any disposition to carry party government beyond its just limits.

This condition must be applied to the removal of those public officers who now have seats in your Executive Council, unless where they have clearly accepted office on an understanding to the contrary effect. I cannot suppose that the necessity of providing the requisite pensions will be deemed by the Assembly an unreasonable accompaniment of the establishment of parliamentary government. And hereafter I think it would be proper to recognise as an invariable rule, that no person should without such provision be deprived of any office (except upon the ground of unfitness or misconduct), unless he had accepted it on the distinct understanding that it was to be held virtually, as well as nominally, during pleasure.

I entertain a strong conviction that the adoption of such a rule will be found conducive not only to the interests of the holders of offices, but also to those of the public, and to a true economy of the public money. As I have already observed, it is impossible to expect that men of superior capacity will devote themselves to the public service unless they are assured that their employment will be permanent, or are offered emoluments so large as to make up for the uncertainty of the tenure by which they are enjoyed. If the emoluments of public employment are small, and its tenure at the same time uncertain, a strong temptation is given to the holders to endeavour to make up for these disadvantages by irregular gains, and thus to give rise to practices equally injurious to the community in a pecuniary and in a moral point of view.

You will observe that, in the preceding observations, I have assumed that those only of the public servants, who are to be regarded as removable on losing the confidence of the Legislature, are to be members of the Executive Council. This I consider to follow from the principles I have laid down. Those public servants, who hold their offices permanently, must upon that very ground be regarded as subordinate, and ought not to be members of either house of the Legislature, by which they would necessarily be more or less mixed up in party struggles; and, on the other hand, those who are to have the general direction of affairs exercise that function by

Digitized by Google

virtue of their responsibility to the Legislature, which implies their being removable from office, and also that they should be members either of the Assembly or of the Legislative Council. But this general direction of affairs, and the control of all subordinate officers, it is the duty of the Governor to exercise through the Executive Council; hence the seats in that Council must be considered as in the nature of political offices, and if held in connexion with other offices must give to these also a political character. This, however, leads me to observe, that if only two or three of the principal offices are to be regarded as political, it may very probably be advisable to assign salaries to two or three of the Executive Councillors as such. The Executive Council has duties of a very important character to perform; those duties, and the defects in the manner in which they had then generally been discharged I find thus described in a confidential despatch which the late Lord Sydenham, then Mr. P. Thomson, addressed to Lord J. Russell, from Halifax, in the year 1840[1]:—

"The functions of the Executive Council, on the other "hand are, it is perfectly clear, of a totally different "character. They are a body upon whom the Governor "must be able to call at any or at all times for advice; "with whom he can consult upon the measures to be sub- "mitted to the Legislature, and in whom he may find "instruments, within its walls, to introduce such amend- "ments in the laws as he may think necessary, or to defend "his acts and his policy. It is obvious, therefore, that "those who compose this body must be persons whose "constant attendance on the Governor can be secured; "principally, therefore, officers of the Government itself; "but, when it may be expedient to introduce others, men "holding seats in one or other House, taking a leading part "in political life, and, above all, exercising influence over "the Assembly."

* * * * *

"The last, and, in my opinion, by far the most serious "defect in the Government is the utter absence of power "in the Executive, and its total want of energy to attempt "to occupy the attention of the country upon real im- "provements, or to lead the Legislature in the prepara-

[1] In July, 1840, Sydenham had found time to visit Halifax, and to allay, though not to settle, the political agitation.

Digitized by Google

"tion and adoption of measures for the benefit of the "colony. It does not appear to have occurred to any "one that it is one of the first duties of the Government "to suggest improvements where they are wanted. That "the constitution having placed the power of legislation "in the hands of an Assembly and a Council, it is only "by acting through these bodies that this duty can be "performed, and that if these proper and legitimate "functions of Government are neglected, the necessary "result must be, not only that the improvements which "the people have a right to expect will be neglected, "and the prosperity of the country checked, but that the "popular branch of the Legislature will misuse its power, "and the popular mind be easily led into excitement, "upon mere abstract theories of government, to which "their attention is directed as the remedy for the uneasi-"ness they feel."

In this view of the proper functions of the Executive Council I entirely concur; but I greatly doubt whether they could be adequately discharged by a Council composed of only two or three persons holding offices in the public service, and of gentlemen serving gratuitously. It is hardly possible to expect that those so serving should devote any large portion of their time to their public duties, and it therefore appears to me highly desirable that salaries should be assigned to at least one or two seats in the Executive Council.

On such terms as these, which I have thus detailed, it appears to me that the peculiar circumstances of Nova Scotia present no insuperable obstacle to the immediate adoption of that system of parliamentary government which has long prevailed in the mother country, and which seems to be a necessary part of representative institutions in a certain stage of their progress.

I have thought it due to you to enter thus fully into the practical difficulties to be encountered in giving effect to those general principles which, in my despatch of the 3d of November, I laid down for your guidance in the selection of your responsible advisers. I am in hopes that the present despatch will leave you in no doubt as to the course to be pursued by you in the event of any changes of which you may anticipate the contingency. I owed it to you to make myself clearly understood on this point; and I trust that what I have now said, will be regarded by

Digitized by Google

your Council as amounting to such a declaration of my views as was requested by them in their letter of the 30th January.

I have, &c.,
(Signed) GREY.

Lord Elgin,[1] sent as Governor-General to Canada in 1847, had received similar instructions, and was fully determined to execute them. His ideals, and the difficulties which he met with in carrying them out, are shown in his correspondence, taken partly from his *Letters and Journals*, edited by Theodore Walrond in 1873, and partly from *Parliamentary Papers and Reports*, 1849, vol. XXXV.

TO EARL GREY.

1847.

Several causes co-operate together to give to personal and party interests the overweening importance which attaches to them in the estimation of local politicians. There are no real grievances here to stir the depths of the popular mind. We are a comfortable people, with plenty to eat and drink, no privileged classes to excite envy, or taxes to produce irritation. It were ungrateful to view these blessings with regret, and yet I believe that they account in some measure for the selfishness of public men and their indifference to the higher aims of statesmanship.

The comparatively small number of members of which the popular bodies who determine the fate of provincial administrations consist, is also, I am inclined to think, unfavourable to the existence of a high order of principle and feeling among official personages. A majority of ten in an assembly of seventy may probably be, according to Cocker, equivalent to a majority of 100 in an assembly of 700. In practice, however, it is far otherwise. The defection of two or three individuals from the majority of ten puts the administration in peril. Thence the perpetual patchwork and trafficking to secure this vote and

[1] It is not the least of Earl Grey's services to his country that he selected Lord Elgin—at the time a political opponent—for the Government of Canada.

Digitized by Google

that, which (not to mention other evils) so engrosses the time and thoughts of ministers, that they have not leisure for matters of greater moment. It must also be remembered that it is only of late that the popular assemblies in this part of the world have acquired the right of determining who shall govern them—of insisting, as we phrase it, that the administration of affairs shall be conducted by persons enjoying their confidence. It is not wonderful that a privilege of this kind should be exercised at first with some degree of recklessness, and that, while no great principles of policy are at stake, methods of a more questionable character for winning and retaining the confidence of these arbiters of destiny should be resorted to. My course in these circumstances, is, I think, clear and plain. It may be somewhat difficult to follow occasionally, but I feel no doubt as to the direction in which it lies. I give to my ministers all constitutional support, frankly and without reserve, and the benefit of the best advice that I can afford them in their difficulties. In return for this, I expect that they will, in so far as it is possible for them to do so, carry out my views for the maintenance of the connexion with Great Britain and the advancement of the interests of the province. On this tacit understanding we have acted together harmoniously up to this time, although I have never concealed from them that I intended to do nothing which may prevent me from working cordially with their opponents, if they are forced upon me. That ministries and oppositions should occasionally change places, is of the very essence of our constitutional system, and it is probably the most conservative element which it contains. By subjecting all sections of politicians in their turn to official responsibilities, it obliges heated partisans to place some restraint on passion, and to confine within the bounds of decency the patriotic zeal with which, when out of place, they are wont to be animated. In order, however, to secure these advantages, it is indispensable that the head of the Government should show that he has confidence in the loyalty of all the influential parties with which he has to deal, and that he should have no personal antipathies to prevent him from acting with leading men.

I feel very strongly that a Governor-General, by acting upon these views with tact and firmness, may hope to establish a moral influence in the province which will go

Digitized by Google

far to compensate for the loss of power consequent on the surrender of patronage to an executive responsible to the local Parliament. Until, however, the functions of his office, under our amended colonial constitution, are more clearly defined—until that middle term which shall reconcile the faithful discharge of his responsibility to the Imperial Government and the province with the maintenance of the quasi-monarchical relation in which he now stands towards the community over which he presides, be discovered and agreed upon, he must be content to tread along a path which is somewhat narrow and slippery, and to find that incessant watchfulness and some dexterity are requisite to prevent him from falling, on the one side into the *néant* of mock sovereignty, or on the other into the dirt and confusion of local factions.

To his Wife.[1]

1847.

I still adhere to my opinion that the real and effectual vindication of Lord Durham's memory and proceedings will be *the success of a Governor-General of Canada who works out his views of government fairly*. Depend upon it, if this country is governed for a few years satisfactorily, Lord Durham's reputation as a statesman will be raised beyond the reach of cavil. I do not indeed know whether I am to be the instrument to carry out this work, or be destined, like others who have gone before me, to break down in the attempt; but I am still of opinion that the thing may be done, though it requires some good-fortune and some qualities not of the lowest order. I find on my arrival here a very weak Government, almost as much abused by their friends as by their foes, no civil or private secretary, and an immense quantity of arrears of business. It is possible, therefore, that I may not be able to bear up against the difficulties of my situation, and that it may remain for some one else to effect that object, which many reasons would render me so desirous to achieve.

[1] Daughter of Lord Durham.

Digitized by Google

To Earl Grey.

Government House, Montreal,
April 30, 1849.

I regret to state that rioting, attended with some consequences much to be regretted, though happily with no injury to life, or, except in one instance, to person, has taken place in the city of Montreal during the last few days. I hasten to furnish your Lordship with an account of what has actually occurred, lest you should be misled by exaggerated reports conveyed through the United States.

2. In consequence of the unexpected arrival of vessels with merchandize at the Port of Quebec, it became necessary for me to proceed, on a short notice, to Parliament, on Wednesday last, in order to give the Royal Assent to a Customs Bill which had that day passed the Legislative Council; and I considered that, as this necessity had arisen, it would not be expedient to keep the public mind in suspense by omitting to dispose, at the same time, of the other Acts in which the two branches of the local Parliament had at an earlier period of the session concurred, and which still awaited my decision. Among these was the Act to provide for the indemnification of parties in Lower Canada whose property was destroyed during the Rebellion in 1837 and 1838, with respect to which, as your Lordship is aware, much excitement has unhappily been stirred.

3. I herewith enclose, for your Lordship's perusal, a printed copy of the Act in question, and I shall not fail by the first mail to furnish you with full information respecting its character and objects, the circumstances which led to its introduction, and the grounds on which I resolved, after much reflection, to sanction it. No money can be paid under it as indemnity for a considerable period, so that Her Majesty's power of disallowance can be exercised with effect, should Her Majesty be so advised, notwithstanding the course which I have taken. As I am writing this Despatch in haste, with a view to its transmission by way of New York, I shall confine myself for the present to a statement of the proceedings by which the peace of the city has been disturbed.

Digitized by Google

4. In order, however, to render this narrative intelligible, I must premise that for some time past the House of Assembly, as at present constituted, has been the object of bitter denunciation, and not unfrequently of reckless menace, on the part of a certain portion of the press of the province, and more especially of that of Montreal. Your Lordship will probably recollect that the body in question is the product of a general election which took place about 18 months ago, under the auspices of the political party now in opposition, and after a dissolution, to which I had recourse on their advice, for the purpose of strengthening them in their position as a Government. The result of this measure was in the last degree unfavourable to those who had recommended it; not, however, so much so in Lower Canada, where the complexion of the representation was little affected by the dissolution,[1] as in the Upper Province, where several constituencies, among which were some of the most populous, rejected conservative in favour of liberal candidates. On a question of confidence raised at the commencement of the session, immediately after the general election, the Administration was defeated by a majority of more than two to one, and a change of Government, as a matter of course, ensued.

5. This alteration in the political complexion of the Assembly, and the change of Government consequent upon it, were therefore clearly and distinctly traceable to a revulsion of sentiment in the British constituencies of Upper Canada. In Lower Canada nothing had occurred to account for either. This circumstance has, however, failed to secure for the decisions of the popular representative body either forbearance or respect from a certain section of those who profess to be emphatically the supporters of British interests. To denounce the Parliament as French in its composition, and the Government as subject to French influences, has been their constant object, and the wildest doctrines have been broached with respect to the right which belongs to a British minority of redressing by violence any indignity to which it may be subjected from such a source. I have now before me an

[1] The actual figures were, that while the previous Parliament had contained sixteen avowed Conservatives from Lower Canada, and several waverers, only six of these survived the General Election, including not a single French Canadian.

Digitized by Google

article that appeared in one of the principal English newspapers of Montreal at a very early period of the session, of which I transcribe the concluding paragraph, as illustrative of the temper and language in which, even at that time, and before the public mind had been excited by the discussion of the Rebellion Losses Bill, a portion of the press ventured to criticise the proceedings of the local Parliament. The article treats of a measure affecting the townships, to which, I believe, no great objection was raised in Parliament. It terminates, however, in the words—"We are very glad of it—the sooner the cloven "foot is made visible the better: the obvious intention "of that majority, composed of Frenchmen, aided by "traitorous British Canadians, is to force French institu- "tions still further upon the British minority in Lower "Canada. The intention is obvious, as we said, and we "are glad that it is openly shown. We trust that the "party of the Government will succeed in every one of "their obnoxious measures. When French tyranny "becomes insupportable we shall find our Cromwell. "Sheffield, in the olden times, used to be famous for its "keen and well-tempered whittles; well, they make "bayonets there now, just as sharp and just as well- "tempered. When we can stand tyranny no longer, it "will be seen whether good bayonets in Saxon hands "will not be more than a match for a mace and a "majority."

6. To persons accustomed to the working of constitutional government in well-ordered communities, it may seem incredible that such language should be employed by the organs of any respectable party in reference to a body comprising the freely-chosen representatives of a constituency, formed on a most popular basis; but the cause of the anomaly is apparent enough to all who are acquainted with the history of Canada. For a series of years the popular representative body and the Executive, supported by the Legislative Council, were, in the Lower Province especially, in a condition of almost constant antagonism. To revile the one was the surest test of patriotism; to denounce the other, of loyalty. In a society singularly democratic in its structure, where diversities of race supplied special elements of confusion, and where consequently it was most important that constituted authority should be respected, the moral influ-

Digitized by Google

ence of law and Government was enfeebled by the existence of perpetual strife between the powers that ought to have afforded to each other a mutual support. No state of affairs could be imagined less favourable to the extinction of national animosities, and to the firm establishment of the gentle and benignant control of those liberal institutions which it is England's pride and privilege to bestow upon her children.

7. I am not without hope that a steady adherence to the principles of constitutional Government, and the continuance of harmony between the co-ordinate branches of the Legislature, may lead in process of time to the correction of these evils; meanwhile, however, I must ascribe mainly to the cause which I have assigned the tone of arrogant defiance with which the resolutions, not of the Government only, but also of the Parliament, are treated by parties who happen for the moment to be unable to make their views prevail with either, and the acts of violence to which this inflammatory language has in the present instance led.

8. That many persons conscientiously disapprove of the measure respecting rebellion losses in Lower Canada which has been introduced by the Government, and which the local Parliament has passed by large majorities, and that in the minds of others it stirs national antipathies and recollections of former conflicts, which designing politicians seek to improve to their own selfish ends, cannot, I fear, be doubted. It is therefore emphatically a measure which should have been approached with calmness and caution, by all at least who are not directly interested in the issue. Unfortunately, however, this has been by no means the case. Not only have appeals to passion of the most reckless description proceeded from the local press, but they have received encouragement from quarters from which they had little right to look for it. Passages such as the following, in which a London journal of influence treats of the British population as affected by the measure in question:—"They are "tolerably able to take care of themselves, and we very "much misconstrue the tone adopted by the English press "and English public in the province if they do not find "some means of resisting the heavy blow and great dis-"couragement which is aimed at them," are read with avidity, and construed to mean that sympathy will be

Digitized by Google

extended from influential quarters at home to those who seek to annul the obnoxious decision of the local Legislature, whatever be the means to which they resort for the attainment of that end.

9. The scenes by which the city of Montreal has been lately disgraced, are the natural fruits of an agitation of this character, operating on a people of excitable temper, who have been taught to believe that a race which they despise, and over which they have been wont to exercise dominion, has obtained through the operation of a constitutional system an authority which it could not otherwise have acquired. Hence, more especially, their vehement indignation against me personally, and the conviction, in many cases I doubt not perfectly sincere, that I have been guilty of a serious dereliction of duty because I have not, as my predecessors have often done before me, consented to place myself in the front of an agitation to counteract the policy of Parliament. The nature of the constitutional doctrines which practically obtain in this section of the community, is curiously exemplified by the fact, that it is not the passage of the Bill by an overwhelming majority of the representatives of the people, or the acquiescence of the Council, but the consent of the Governor which furnishes the pretext for an exhibition of popular violence.

10. When I left the House of Parliament after giving the Royal Assent to several Bills, to which I have referred, I was received with mingled cheers and hootings by a crowd by no means numerous which surrounded the entrance to the building. A small knot of individuals consisting, it has since been ascertained, of persons of a respectable class in society pelted the carriage with missiles which they must have brought with them for the purpose. Within an hour after this occurrence, a notice, of which I enclose a copy, issued from one of the newspaper offices, calling a meeting in the open air. At the meeting inflammatory speeches were made. On a sudden, whether under the effect of momentary excitement, or in pursuance of a plan arranged beforehand, the mob proceeded to the House of Parliament where the members were still sitting, and breaking the windows set fire to the building and burned it to the ground. By this wanton act public property of considerable value, in-

Digitized by Google

cluding two excellent libraries, has been utterly destroyed. Having achieved their object the crowd dispersed, apparently satisfied with what they had done. The members were permitted to retire unmolested, and no resistance was offered to the military who appeared on the ground after a brief interval, to restore order, and aid in extinguishing the flames. During the two following days a good deal of excitement prevailed in the streets, and some further acts of incendiarism were perpetrated. Since then the military force has been increased, and the leaders of the disaffected party have shown a disposition to restrain their followers, and to direct their energies towards the more constitutional object of petitioning the Queen for my recall, and the disallowance of the obnoxious Bill. The proceedings of the House of Assembly will also tend to awe the turbulent. I trust, therefore, that the peace of the city will not be again disturbed. The newspapers which I enclose contain full, and I believe pretty accurate, accounts of all that has occurred since Wednesday last.[1]

11. The ministry are blamed for not having made adequate provision against these disasters; that they by no means expected that the hostility to the Rebellion Losses Bill would have displayed itself in the outrages which have been perpetrated during the last few weeks is certain. Perhaps sufficient attention was not paid by them to the menaces of the opposition press. It must be admitted, however, that their position was one of considerable difficulty. The civil force of Montreal—a city containing about 50,000 inhabitants of different races, with secret societies and other agencies of mischief in constant activity—consists of two policemen under the authority of the Government, and seventy appointed by the Corporation. To oppose, therefore, effectual resistance to any considerable mob, recourse must be had in all cases either to the military or to a force of civilians enrolled for the occasion. Grave objections, however, presented themselves in the present instance to the adoption of either of these courses until the disposition to tumult on the part of the populace unhappily manifested itself in overt acts. More especially was it of importance to avoid any measure which might have had a tendency to produce a collision between parties on a question on which their

[1] For an account of the proceedings, at this time, see Dent, *op. cit.*, ii. 143-177; Pope, *Sir John Macdonald*, i. 65-69.

Digitized by Google

feelings were so strongly excited. The result of the course pursued is, that there has been no bloodshed, and, except in the case of some of the ministers themselves, no destruction of private property.

12. The proceedings in the Assembly have been important. I enclose the copy of an address which has been voted to me by a majority of 36 to 16, expressive of abhorrence at the outrages which have taken place in the city of Montreal, of loyalty to the Queen, and approval of my just and impartial administration of the Government with my late as well as my present advisers. Some of the opposition approve of the course which I have taken with respect to the Rebellion Losses Bill, as appears from the speeches of Messrs. Wilson and Galt,[1] of which reports are given in the newspapers which I enclose. Mr. Wilson is an influential member of the Upper Canada conservative party, and Mr. Galt's views are the more important, because he has been returned to Parliament only a few days ago by a Lower Canadian constituency which comprises a large British population. Generally, however, as the amendments they have moved to the address show, they desire to avoid committing themselves on this point. The votes against the Address may be thus classed: Sir A. M'Nab[2] and his party; my late ministers and their party; and Mr. Papineau. The first acts with perfect consistency in voting as he has done on this question; for he has always contended that government conducted on British principles is unsuited to Canada. The course of the second class is less intelligible; for, until the day on which they resigned their offices into my hands, they uniformly expressed approval of the principles on which my conduct as Governor-General was guided; and these, as your Lordship well knows, have undergone no change with the change of administration. Mr. Papineau's vote conveys a useful lesson which will not, I trust, be lost on persons who had been induced to believe that the persecution of which I am now the object is really attributable to my having shown undue lenity to those who were led by him into rebellion.

13. I have now furnished your Lordship with as clear a statement of these important occurrences as I can give,

[1] Mr. A. T. Galt, member for Sherbrooke.

[2] Member for Hamilton, leader of the High Tory Party from Upper Canada, the remnant of the Family Compact.

Digitized by Google

and I can conclude by assuring you that the city is perfectly tranquil, and that there is no present likelihood of a renewal of disturbances. A few days will show what echo the proceedings of the violent party awaken in Upper Canada, and to what extent they are followed by reaction. Meanwhile it is my firm conviction that if this dictation be submitted to, the government of this province by constitutional means will be impossible, and that the struggle between overbearing minorities, backed by force, and majorities resting on legality and established forms, which has so long proved the bane of Canada, driving capital from the province, and producing a state of chronic discontent, will be perpetuated. At the same time, I think that if I am unable to recover that position of dignified neutrality between contending parties which it has been my unremitting study to maintain, and from which I would appear to have been for the moment driven —not, as I firmly believe, through any fault of my own, but by the unreasoning violence of faction—it may be a question with your Lordship whether it would not be for the interests of Her Majesty's service that I should be removed from my high office to make way for one who should not indeed hold views at variance with mine with respect to the duties of a constitutional Governor, but who should have the advantage of being personally unobnoxious to any section of Her Majesty's subjects within the province.

To the Duke of Newcastle.

Quebec,
February 18, 1858.

Now that the bonds formed by commercial protection and the disposal of local offices are severed, it is very desirable that the prerogative of the Crown, as the fountain of honour, should be employed, in so far as this can properly be done, as a means of attaching the outlying parts of the empire to the throne. Of the soundness of this proposition as a general principle no doubt can, I presume, be entertained. It is not, indeed, always easy to apply it in these communities, where fortunes are precarious, the social system so much based on equality, and public services so generally mixed up with party conflicts. But it should never, in my opinion, be lost sight of, and

Digitized by Google

advantage should be taken of all favourable opportunities to act upon it.

There are two principles which ought, I think, as a general rule to be attended to in the distribution of Imperial honours among colonists. Firstly, they should appear to emanate directly from the Crown, on the advice, if you will, of the Governors and Imperial Ministers, but not on the recommendation of the local executives. And, secondly, they should be conferred, as much as possible, on the eminent persons who are no longer actively engaged in political life. If these principles be neglected, such distinctions will, I fear, soon lose their value.

To Earl Grey.

Toronto,
March 28, 1850.

Lord John's speech on the colonies seems to have been eminently successful at home. It is calculated, too, I think, to do good in the colonies; but for one sentence, the introduction of which I deeply deplore—the sting in the tail. Alas for that sting in the tail![1] I much fear that when the liberal and enlightened sentiments, the enunciation of which by one so high in authority is so well calculated to make the colonists sensible of the advantages which they derive from their connection with Great Britain, shall have passed away from their memories, there will not be wanting those who will remind them that, on this solemn occasion, the Prime Minister of England, amid the plaudits of a full senate, declared that he looked forward to the day when the ties which he was endeavouring to render so easy and mutually advantageous would be severed. And wherefore this foreboding? or, perhaps,

[1] This was the speech delivered in the House of Commons on February 8, 1850. Lord John ended by saying: "I anticipate, indeed, with others that some of the colonies may so grow in population and wealth that they may say, 'Our strength is sufficient to enable us to be independent of England. The link is now become onerous to us. The time is come when we think we can, in amity and alliance with England, maintain our independence.' I do not think that that time is yet approaching. But let us make them, as far as possible, fit to govern themselves; let us give them, as far as we can, the capacity of ruling their own affairs; let them increase in wealth and population, and, whatever may happen, we of this great Empire shall have the consolation of saying that we have contributed to the happiness of the world."

Digitized by Google

I ought not to use the term foreboding, for really to judge by the comments of the press on this declaration of Lord John's, I should be led to imagine that the prospect of these sucking democracies, after they have drained their old mother's life-blood, leaving her in the lurch, and setting up as rivals, just at the time when their increasing strength might render them a support instead of a burden, is one of the most cheering which has of late presented itself to the English imagination. But wherefore then this anticipation—if foreboding be not the correct term? Because Lord John and the people of England persist in assuming that the Colonial relation is incompatible with maturity and full development. And is this really so incontestable a truth that it is a duty not only to hold but to proclaim it? Consider for a moment what is the effect of proclaiming it in our case. We have on this continent two great empires in presence, or rather, I should say, two great Imperial systems. In many respects there is much similarity between them. In so far as powers of self-government are concerned it is certain that our colonists in America have no reason to envy the citizens of any state in the Union. The forms differ, but it may be shown that practically the inhabitants of Canada have a greater power in controlling their own destiny that those of Michigan or New York, who must tolerate a tariff imposed by twenty other states, and pay the expenses of war undertaken for objects which they profess to abhor. And yet there is a difference between the two cases; a difference, in my humble judgment, of sentiment rather than substance, which renders the one a system of life and strength, and the other a system of death and decay. No matter how raw and rude a territory may be when it is admitted as a state into the Union of the United States, it is at once, by the popular belief, invested with all the dignity of manhood, and introduced into a system which, despite the combativeness of certain ardent spirits from the South, every American believes and maintains to be immortal. But how does the case stand with us? No matter how great the advance of a British colony in wealth and civilisation; no matter how absolute the powers of self-government conceded to it, it is still taught to believe that it is in a condition of pupilage from which it must pass before it can attain maturity. For one, I have never been able to comprehend why, elastic as our constitutional

Digitized by Google

system is, we should not be able, now more especially when we have ceased to control the trade of our colonies, to render the links which bind them to the British Crown at least as lasting as those which unite the component parts of the Union. . . . One thing is, however, indispensable to the success of this or any other system of Colonial Government. You must renounce the habit of telling the Colonies that the Colonial is a provisional existence. You must allow them to believe that, without severing the bonds which unite them to Great Britain, they may attain the degree of perfection, and of social and political development, to which organised communities of free men have a right to aspire.

Since I began this letter I have, I regret to say, confirmatory evidence of the justice ot the anticipations I had formed of the probable effect of Lord John's declaration. I enclose extracts from two newspapers, an annexationist, the *Herald* of Montreal, and a *quasi* annexationist, the *Mirror* of Toronto. You will note the use they make of it. I was more annoyed, however, I confess, by what occurred yesterday in Council. We had to determine whether or not to dismiss from his offices a gentleman who is both M.P.P., Q.C., and J.P., and who has issued a flaming manifesto in favour, not of annexation, but of an immediate declaration of independence as a step to it. I will not say anything of my own opinion on the case, but it was generally contended by the members of the Board, that it would be impossible to maintain that persons who had declared their intention to throw off their allegiance to the Queen, with a view to annexation,[1] were unfit to retain offices granted during pleasure, if persons who made a similar declaration with a view to independence were to be differently dealt with. Baldwin[2] had Lord John's speech in his hand. He is a man of singularly placid demeanour, but he has been seriously ill, so possibly his nerves are shaken—at any rate I never saw him so much moved. "Have you read the latter part of "Lord J. Russell's speech?" he said to me. I nodded assent. "For myself," he added, "if the anticipations "therein expressed prove to be well founded, my interest "in public affairs is gone for ever. But is it not hard "upon us while we are labouring, through good and evil

[1] See p. 885.

[2] At this time joint premier with Sir L. H. Lafontaine.

Digitized by Google

"report, to thwart the designs of those who would dis-
"member the Empire, that our adversaries should be
"informed that the difference between them and the
"Prime Minister of England is only one of time? If the
"British Government has really come to the conclusion
"that we are a burden to be cast off whenever a
"favourable opportunity offers, surely we ought to be
"warned."

I replied that while I regretted as much as he could do the paragraph to which he referred, I thought he somewhat mistook its import: that I believed no man living was more opposed to the dismemberment of the Empire than Lord J. Russell: that I did not conceive that he had any intention of deserting the Colonies, or of inviting them to separate from England; but that he had in the sentence in question given utterance to a purely speculative, and in my judgment most fallacious, opinion, which was shared, I feared, by very many persons both in England and the Colonies: that I held it to be a perfectly unsound and most dangerous theory, that British Colonies could not attain maturity without separation, and that my interest in labouring with them to bring into full play the principles of Constitutional Government in Canada would entirely cease if I could be persuaded to adopt it. I said all this, I must confess however, not without misgiving, for I could not but be sensible that, in spite of all my allegations to the contrary, my audience was disposed to regard a prediction of this nature, proceeding from a Prime Minister, less as a speculative abstraction than as one of that class of prophecies which work their own fulfilment. I left the Council Chamber disheartened, with the feeling that Lord J. Russell's reference to the manhood of Colonies was more likely to be followed by practical consequences than Lamartine's famous "*quand* "*l'heure aura sonné*" invocation to oppressed nationalities. It is possible, indeed, that I exaggerate to myself the probable effects of this declaration. Politicians of the Baldwin stamp, with distinct views and aims, who having struggled to obtain a Government on British principles, desire to preserve it, are not, I fear, very numerous in Canada; the great mass move on with very indefinite purposes, and not much inquiring whither they are going. Of one thing, however, I am confident: there cannot be any peace, contentment, progress, or credit in this colony

Digitized by Google

while the idea obtains that the connection with England is a millstone about its neck which should be cast off, as soon as it can be conveniently managed. What man in his senses would invest his money in the public securities of a country where questions affecting the very foundations on which public credit rests are in perpetual agitation; or would settle in it at all if he could find for his foot a more stable resting-place elsewhere? I may, perhaps, be expressing myself too unreservedly with reference to opinions emanating from a source which I am no less disposed than bound to respect. As I have the means, however, of feeling the pulse of the colonists in this most feverish region, I consider it to be always my duty to furnish you with as faithful a record as possible of our diagnostics. And, after all, may I not with all submission ask, Is not the question at issue a most momentous one? What is it indeed but this: Is the Queen of England to be the Sovereign of an Empire, growing, expanding, strengthening itself from age to age, striking its roots deep into fresh earth and drawing new supplies of vitality from virgin soils? Or is she to be for all essential purposes of might and power, Monarch of Great Britain and Ireland merely—her place and that of her line in the world's history determined by the productiveness of 12,000 square miles of a coal formation, which is being rapidly exhausted, and the duration of the social and political organization over which she presides dependent on the annual expatriation, with a view to its eventual alienization, of the surplus swarms of her born subjects? If Lord J. Russell, instead of concluding his excellent speech with a declaration of opinion which, as I read it, and as I fear others will read it, seems to make it a point of honour with the Colonists to prepare for separation, had contented himself with resuming the statements already made in its course, with showing that neither the Government nor Parliament could have any object in view in their Colonial policy but the good of the Colonies, and the establishment of the relation between them and the mother-country on the basis of mutual affection; that, as the idea of maintaining a Colonial Empire for the purpose of exercising dominion or dispensing patronage had been for some time abandoned, and that of regarding it as a hot-bed for forcing commerce and manufactures more recently renounced, a greater amount

Digitized by Google

of free action and self-government might be conceded to British Colonies without any breach of Imperial Unity, or the violation of any principle of Imperial Policy, than had under any scheme yet devised fallen to the lot of the component parts of any Federal or Imperial system ; if he had left these great truths to work their effect without hazarding a conjecture which will, I fear, be received as a suggestion, with respect to the course which certain wayward members of the Imperial family may be expected to take in a contingency still confessedly remote, it would, I venture with great deference to submit, in so far at least as public feeling in the Colonies is concerned, have been safer and better.

You draw, I know, a distinction between separation with a view to annexation and separation with a view to independence. You say the former is an act of treason, the latter a natural and legitimate step in progress. There is much plausibility doubtless in this position, but, independently of the fact that no one advocates independence in these Colonies except as a means to the end, annexation, is it really tenable ? If you take your stand on the hypothesis that the Colonial existence is one with which the Colonists ought to rest satisfied, then, I think, you are entitled to denounce, without reserve or measure, those who propose, for some secondary object, to substitute the Stars and Stripes for the Union Jack. But if, on the contrary, you assume that it is a provisional state, which admits of but a stunted and partial growth, and out of which all communities ought in the course of nature to strive to pass, how can you refuse to permit your colonies here, when they have arrived at the proper stage in their existence, to place themselves in a condition which is at once most favourable to their security and to their perfect national development ? What reasons can you assign for the refusal, except such as are founded on selfishness, and are, therefore, morally worthless ? If you say that your great lubberly boy is too big for the nursery, and that you have no other room for him in your house, how can you decline to allow him to lodge with his elder brethren over the way, when the attempt to keep up an establishment for himself would seriously embarrass him ?

Digitized by Google

To Earl Grey.

Toronto,
November 1, 1850.

Sir H. Bulwer spent four days with us, and for many reasons I am glad that he has been here. He leaves us knowing more of Canada than he did when he came. I think too that both he and Sir E. Head return to their homes re-assured on many points of our internal policy, on which they felt doubtful before, and much enlightened as to the real position of men and things in this province.

With one important truth I have laboured to impress them, and I hope successfully. It is this : that the faithful carrying out of the principles of Constitutional Government is a departure from the American model, not an approximation to it, and, therefore, a departure from republicanism in its only workable shape. Of the soundness of this view of our case I entertain no doubt whatever ; and though I meet with few persons to whom it seems to have occurred (for the common belief of superficial observers is that we are republicanising the colonies), I seldom fail in bringing it home to the understanding of any intelligent person with whom I have occasion to discuss it. The fact is, that the American system is our old Colonial system with, in certain cases, the principle of popular election substituted for that of nomination by the Crown. Mr. Filmore stands to his Congress very much in the same relation in which I stood to my Assembly in Jamaica. There is the same absence of effective responsibility in the conduct of legislation, the same want of concurrent action between the parts of the political machine. The whole business of legislation in the American Congress, as well as in the State Legislatures, is conducted in the manner in which railway business was conducted in the House of Commons at a time when it is to be feared that, notwithstanding the high standard of honour in the British Parliament, there was a good deal of jobbing. For instance, our Reciprocity measure was pressed by us at Washington last session, just as a Railway Bill in 1845 or 1846 would have been pressed in Parliament. There was no Government to deal with. The interests of the Union, as a whole and distinct from local and sectional interests, had no organ in the representative bodies ; it was all a question of canvassing this member

Digitized by Google

of Congress or the other. It is easy to perceive that, under such a system, jobbing must become not the exception but the rule.

Now I feel very strongly, that when a people have been once thoroughly accustomed to the working of such a Parliamentary system as ours, they never will consent to revert to this clumsy irresponsible mechanism. Whether we shall be able to carry on the war here long enough to allow the practice of Constitutional Government and the habits of mind which it engenders to take root in these provinces, may be doubtful. But it may be worth your while to consider whether these views do not throw some light on affairs in Europe. If you part with constitutional monarchies there, you may possibly get something much more democratic; but you cannot, I am confident, get American republicanism. It is the fashion to say, "of course not; we cannot get their federal system;" but this is not the only reason, there are others that lie deeper. Look at France, where they are trying to jumble up the two things, a head of the State responsible to the people who elect him, and a ministry responsible to the Government.

To the Duke of Newcastle.

March 26, 1853.

It is argued that, by the severance of the connection, British statesmen would be relieved of an onerous responsibility for colonial acts of which they cannot otherwise rid themselves. Is there not, however, some fallacy in this? If by conceding absolute independence the British Parliament can acquit itself of the obligation to impose its will upon the Colonists, in the matter, for instance, of a Church Establishment, can it not attain the same end by declaring that, as respects such local questions, the Colonists are free to judge for themselves? How can it be justifiable to adopt the former of these expedients, and sacrilegious to act upon the latter?

The true policy, in my humble judgment, is to throw the whole weight of responsibility on those who exercise the real power, for, after all, the sense of responsibility is the best security against the abuse of power; and, as respects the connection, to act and speak on this hypothesis—that there is nothing in it to check the develop-

Digitized by Google

ment of healthy national life in these young communities. I believe that this policy will be found to be not only the safest, but also (an important consideration in these days) the most economical.

To Earl Grey.

Toronto,
December 17, 1850.

Although, as you observe, it seems to be rather idle in us to correspond on what may be termed speculative questions, when we have so much pressing business on hand, I venture to say a few words in reply to your letter of the 23rd ult., firstly, because I presume to dissent from some of the opinions which you advance in it; and, secondly, because I have a practical object of no small importance in view in calling your attention to the contrasts which present themselves in the working of our institutions, and those of our neighbours in the States. My practical object is this: when you concede to the Colonists Constitutional Government in its integrity, you are reproached with leading them to Republicanism and the American Union. The same reproach is hurled with anathemas against your humble servant. Lord Stanley, if I rightly remember, in the debate on Ryland's case last year, stated amid cheers, that if you were in the habit of consulting the ministers of the Crown in the Colony before you placed persons on the colonial pension list, he had no hesitation in saying you had already established a republic in Canada! Now I believe, on the contrary, that it may be demonstrated that the concession of Constitutional Government has a tendency to draw the Colonists the other way; firstly, because it slakes that thirst for self-government which seizes on all British communities when they approach maturity; and, secondly, because it habituates the Colonists to the working of a political mechanism, which is both intrinsically superior to that of the Americans, and more unlike it than our old Colonial system.

Adopting, however, the views with respect to the superiority of the mechanism of our political system to that of our neighbours, which I have ventured to urge, you proceed to argue that the remedy is in their hands; that without abandoning their republicanism they and their

Digitized by Google

confrères in France have nothing to do but to dismiss their Presidents and to substitute our constitution without a King, the body without the head, for their own, to get rid of the inconveniences which they now experience; and you quote with approbation, as an embodiment of this idea, the project submitted by M. Grévy and the Red Republicans to the French Constituent Assembly.

Now here I confess I cannot go along with you, and the difference between us is a very material one; for if the monarch be not an indispensable element in our constitutional mechanism, and if we can secure all the advantages of that mechanism without him, I have drawn the wrong moral from the facts. You say that the system the Red Republicans would have established in France would have been the nearest possible approach to our own. It is possible, I think, that we may be tending towards the like issues. It is possible, perhaps probable, that as the House of Commons becomes more democratic in its composition, and consequently more arrogant in its bearing, it may cast off the shackles which the other powers of the State impose on its self-will, and even utterly abolish them; but I venture to believe that those who last till that day comes, will find that they are living under a very different constitution from that which we now enjoy; that they have traversed the interval which separates a temperate and cautious administration of public affairs resting on the balance of powers and interests, from a reckless and overbearing tyranny based on the caprices and passions of an absolute and irresponsible body. You talk somewhat lightly of the check of the Crown, although you acknowledge its utility. But is it indeed so light a matter, even as our constitution now works? Is it a light matter that the Crown should have the power of dissolving Parliament; in other words, of deposing the tyrant at will? Is it a light matter that for several months in each year the House of Commons should be in abeyance, during which period the nation looks on Ministers not as slaves of Parliament, but servants of the Crown? Is it a light matter that there should still be such respect for the monarchical principle, that the servants of that visible entity yclept the Crown are enabled to carry on much of the details of internal and foreign administration without consulting Parliament, and even without its cognisance? Or do you suppose that the Red Republicans,

Digitized by Google

when they advocated the nomination of a Ministry of the House of Assembly with a revocable *mandat*, intended to create a Frankenstein[1] endowed with powers in some cases paramount to, and in others running parallel with, the authority of the omnipotent body to which it owed its existence? My own impression is, that they meant a set of delegates to be appointed, who should exercise certain functions of legislative initiation and executive patronage so long as they reflected clearly, in the former the passions, and in the latter the interests of the majority for the time being, and no longer.

It appears to me, I must confess, that if you have a republican form of government in a great country, with complicated internal and external relations, you must either separate the executive and legislative departments, as in the United States, or submit to a tyranny of the majority, not the more tolerable because it is capricious and wielded by a tyrant with many heads. Of the two evils I prefer the former.

Consider, for a moment, how much more violent the proceedings of majorities in the American Legislatures would be, how much more reckless the appeals to popular passion, how much more frequently the permanent interests of the nation and the rights of individuals and classes would be sacrificed to the object of raising political capital for present uses, if debates or discussions affected the tenure of office. I have no idea that the executive and legislative departments of the State can be made to work together with a sufficient degree of harmony to give the maximum of strength and of mutual independence to secure freedom and the rights of minorities, except under the presidency of Monarchy, the moral influence of which, so long as a nation is monarchical in its sentiments, cannot, of course, be measured merely by its recognised power.

To Mr. Cumming Bruce.

September, 1852.

As respects the *matter* of the report,[2] I am disposed to believe that, viewing the question with reference to personal interests exclusively, my removal from hence would

[1] *Sic.* "Monster" is meant.

[2] *I.e.*, that he was to be recalled by the Ministry, headed by Lord Derby, which had recently come into power.

Digitized by Google

not be any disadvantage to me. But, as to my work here, —there is the rub. Is it to be all undone? On this point I must speak frankly. I have been possessed (I use the word advisedly, for I fear that most persons in England still consider it a case of *possession*) with the idea that it is possible to maintain on this soil of North America, and in the face of Republican America, British connection and British institutions, if you give the latter freely and trustingly. Faith, when it is sincere, is always catching; and I have imparted this faith, more or less thoroughly, to all Canadian statesmen with whom I have been in official relationship since 1848, and to all intelligent Englishmen with whom I have come in contact since 1850 —as witness Lord Wharncliffe, Waldegrave, Tremenheere, &c. &c. Now if the Governor ceases to possess this faith, or to have the faculty of imparting it, I confess I fear that, ere long, it will become extinct in other breasts likewise. I believe that it is equally an error to imagine with one old-fashioned party, that you can govern such dependencies as this on the antiquated bureaucratic principle, by means of rescripts from Downing Street, in defiance of the popular legislatures, and on the hypothesis that one local faction monopolises all the loyalty of the Colony; and to suppose with the Radicals that all is done when you have simply told the colonists "to go to the devil their own way." I believe, on the contrary, that there is more room for the exercise of influence on the part of the Governor under my system than under any that ever was before devised; an influence, however, wholly moral—an influence of suasion, sympathy, and moderation, which softens the temper while it elevates the aims of local politics.

It is true that on certain questions of public policy, especially with regard to Church matters, views are propounded by my ministers which do not exactly square with my pre-conceived opinions, and which I acquiesce in, so long as they do not contravene the fundamental principles of morality, from a conviction that they are in accordance with the general sentiments of the community.

It is true that I do not seek the commendation bestowed on Sir F. Head for bringing men into his councils from the Liberal party, and telling them that they should enjoy only a partial confidence; thereby allowing them to retain their position as tribunes of the people in conjunction

Digitized by Google

with the *prestige* of advisers of the Crown by enabling them to shirk responsibility for any acts of government which are unpopular. It is true that I have always said to my advisers, "while you continue my advisers you shall enjoy my unreserved confidence; and *en revanche* you shall be responsible for all acts of government."

But it is no less certain that there is not one of them who does not know that no inducement on earth would prevail with me to bring me to acquiesce in any measures which seemed to me repugnant to public morals, or Imperial interests; and I must say that, far from finding in my advisers a desire to entrap me into proceedings of which I might disapprove, I find a tendency constantly increasing to attach the utmost value to my opinion on all questions, local or general, that arise.

To the Colonial Secretary, Sir George Grey.

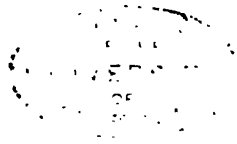
Quebec,
December 18, 1854.

I readily admit that the maintenance of the position and due influence of the Governor is one of the most critical problems that have to be solved in the adaptation of Parliamentary Government to the Colonial system: and that it is difficult to over-estimate the importance which attaches to its satisfactory solution. As the Imperial Government and Parliament gradually withdraw from legislative interference, and from the exercise of patronage in Colonial affairs, the office of Governor tends to become, in the most emphatic sense of the term, the link which connects the Mother-country and the Colony, and his influence the means by which harmony of action between the local and imperial authorities is to be preserved. It is not, however, in my humble judgment, by evincing an anxious desire to stretch to the utmost constitutional principles in his favour, but, on the contrary, by the frank acceptance of the conditions of the Parliamentary system, that this influence can be most surely extended and confirmed. Placed by his position above the strife of parties—holding office by a tenure less precarious than the ministers who surround him—having no political interests to serve but that of the community whose affairs he is appointed to administer—his opinion cannot fail, when all cause for suspicion and jealousy is

Digitized by Google

removed, to have great weight in the Colonial Councils, while he is set at liberty to constitute himself in an especial manner the patron of those larger and higher interests—such interests, for example, as those of education, and of moral and material progress in all its branches —which, unlike the contests of party, unite instead of dividing the members of the body politic. The mention of such influences as an appreciable force in the administration of public affairs may provoke a sneer on the part of persons who have no faith in any appeal which is not addressed to the lowest motives of human conduct; but those who have juster views of our common nature, and who have seen influences that are purely moral wielded with judgment, will not be disposed to deny to them a high degree of efficacy.

Digitized by Google



THE ANNEXATION MOVEMENT

THE frequent changes in British economic policy, which culminated in 1846 in the repeal of the Corn Laws, and the consequent withdrawal of the preference given to Canadian wheat and flour, bore hard on Canadian farmers and millers, especially as colonial shipping was still hampered by the Navigation Acts. An acute commercial crisis followed, and was the cause of the issue early in 1849 of the celebrated Annexation Manifesto, which is given below. This document emanated from Montreal, the chief commercial and shipping town of the province, and was largely signed by prominent business men of both political parties.[1] With it are given some explanatory letters of Lord Elgin.

So much of the discontent as was legitimate disappeared on the repeal of the Navigation Acts in June, 1849, and on the negotiation by Lord Elgin in 1854 of a Treaty of Reciprocity in natural products with the United States. The question of peaceful annexation did not again become an issue in Canadian politics till 1887-

[1] Nine hundred and sixty-nine signatures were appended. Among them were those of two Queen's Counsellors and of several Justices of the Peace. Of these all who did not explicitly disavow their signatures were removed from office by the Governor-General, with the approval of his Cabinet.

In after-years, when Conservative speakers frequently attempted to brand their opponents with "disloyalty," a reminder that in his petulant youth the speaker had signed this manifesto was a not unusual retort. See an interesting account of the feeling of the time by Sir John Macdonald, who was pressed to sign, but refused, in Joseph Pope, *Sir John Macdonald*, vol. i., pp. 71, 72.

Digitized by Google

1891, when a movement in its favour again originated in commercial considerations, and again passed away.

TO THE PEOPLE OF CANADA,

The number and magnitude of the evils that afflict our country, and the universal and increasing depression of its material interests, call upon all persons animated by a sincere desire for its welfare to combine for the purpose of inquiry and preparation, with a view to the adoption of such remedies as a mature and dispassionate investigation may suggest.

Belonging to all parties, origins, and creeds, but yet agreed upon the advantage of co-operation for the performance of a common duty to ourselves and our country, growing out of a common necessity, we have consented, in view of a brighter and happier future, to merge in oblivion all past differences, of whatever character, or attributable to whatever source. In appealing to our fellow colonists to unite with us in this our most needful duty, we solemnly conjure them, as they desire a successful issue and the welfare of their country, to enter upon the task, at this momentous crisis, in the same fraternal spirit.

The reversal of the ancient policy of Great Britain, whereby she withdrew from the colonies their wonted protection in her markets, has produced the most disastrous effects upon Canada. In surveying the actual condition of the country, what but ruin or rapid decay meets the eye! Our provincial Government and civic corporations embarrassed; our banking and other securities greatly depreciated; our mercantile and agricultural interests alike unprosperous; real estate scarcely saleable upon any terms; our unrivalled rivers, lakes, and canals, almost unused; whilst commerce abandons our shores; the circulating capital, amassed under a more favourable system, is dissipated, with none from any quarter to replace it! Thus, without available capital, unable to effect a loan with foreign states or with the mother country, although offering security greatly superior to that which readily obtains money both from the United States and Great Britain, when other than colonists are the applicants. Crippled, therefore, and checked in the full career of private and public enterprise, this possession of the British Crown—our country—stands before

Digitized by Google

the world in humiliating contrast with its immediate neighbours, exhibiting every symptom of a nation fast sinking to decay.

With superabundant water power, and cheap labour, especially in Lower Canada, we have yet no domestic manufactures; nor can the most sanguine, unless under altered circumstances, anticipate the home growth or advent from foreign parts, of either capital or enterprise, to embark in this great source of national wealth. Our institutions, unhappily, have not that impress of permanence which can alone impart security and inspire confidence; and the Canadian market is too limited to tempt the foreign capitalist.

Whilst the adjoining States are covered with a network of thriving railways, Canada possesses but three lines, which, together, scarcely exceed 50 miles in length, and the stock in two of which is held at a depreciation of from 50 to 80 per cent.—a fatal symptom of the torpor overspreading the land.

Our present form of provincial Government is cumbrous, and so expensive as to be ill suited to the circumstances of the country; and the necessary reference it demands to a distant Government, imperfectly acquainted with Canadian affairs and somewhat indifferent to our interests, is anomalous and irksome. Yet, in the event of a rupture between two of the most powerful nations of the world, Canada would become the battle-field and the sufferer, however little her interests might be involved in the cause of quarrel or the issue of the contest.

The bitter animosities of political parties and factions in Canada, often leading to violence, and, upon one occasion, to civil war, seem not to have abated with time; nor is there, at the present moment, any prospect of diminution or accommodation. The aspect of parties becomes daily more threatening towards each other, and, under our existing institutions and relations, little hope is discernible of a peaceful and prosperous administration of our affairs, but difficulties will, to all appearance, accumulate until government becomes impracticable. In this view of our position, any course that may promise to efface existing party distinctions and place entirely new issues before the people must be fraught with undeniable advantages.

Digitized by Google

Among the statesmen of the mother country—among the sagacious observers of the neighbouring republic—in Canada—and in all British North America—amongst all classes, there is a strong prevailing conviction that a political revolution in this country is at hand. Such forebodings cannot readily be dispelled, and they have, moreover, a tendency to realize the events to which they point. In the meanwhile, serious injury results to Canada from the effect of this anticipation upon the more desirable class of settlers, who naturally prefer a country under fixed and permanent forms of government to one in a state of transition.

Having thus adverted to some of the causes of our present evils, we would consider how far the remedies ordinarily proposed possess sound and rational inducements to justify their adoption :—

1. "The revival of protection in the markets of the United Kingdom."

This, if attainable in a sufficient degree, and guaranteed for a long period of years, would ameliorate the condition of many of our chief interests ; but the policy of the empire forbids the anticipation. Besides, it would be but a partial remedy. The millions of the mother country demand cheap food ; and a second change from protection to free trade would complete that ruin which the first has done much to achieve.

2. "The protection of home manufactures."

Although this might encourage the growth of a manufacturing interest in Canada, yet, without access to the United States market, there would not be a sufficient expansion of that interest, from the want of consumers, to work any result that could be admitted as a "remedy" for the numerous evils of which we complain.

3. "A Federal Union of the British American Provinces."

The advantages claimed for that arrangement are free trade between the different provinces, and a diminished government expenditure. The attainment of the latter object would be problematical, and the benefits anticipated from the former might be secured by legislation under our existing system. The markets of the sister provinces would not benefit our trade in timber, for they have a surplus of that article in their own forests ; and their demand for agricultural products would be

Digitized by Google

too limited to absorb our means of supply. Nor could Canada expect any encouragement to her manufacturing industry from those quarters. A Federal Union, therefore, would be no remedy.

4. "The independence of the British North American colonies as a Federal Republic."

The consolidation of its new institutions from elements hitherto so discordant—the formation of treaties with foreign powers—the acquirement of a name and character among the nations—would, we fear, prove an over-match for the strength of the new republic. And, having regard to the powerful confederacy of the States conterminous with itself, the needful military defences would be too costly to render independence a boon, whilst it would not, any more than a Federal Union, remove those obstacles which retard our material prosperity.

5. "Reciprocal free trade with the United States, as respects the products of the farm, the forest, and the mine."

If obtained, this would yield but an instalment of the many advantages which might be otherwise secured. The free interchange of such products would not introduce manufactures to our country. It would not give us the North American continent for our market. It would neither so amend our institutions as to confer stability nor ensure confidence in their permanence; nor would it allay the violence of parties, or, in the slightest degree, remedy many of our prominent evils.

6. Of all the remedies that have been suggested for the acknowledged and insufferable ills with which our country is afflicted, there remains but one to be considered. It propounds a sweeping and important change in our political and social condition, involving considerations which demand our most serious examination. This remedy consists in a "Friendly and peaceful separation from British connexion, and a union upon equitable terms with the great North American confederacy of sovereign States."

We would premise, that towards Great Britain we entertain none other than sentiments of kindness and respect. Without her consent we consider separation as

Digitized by Google

neither practicable nor desirable. But the colonial policy of the parent state, the avowals of her leading statesmen, the public sentiments of the empire, present unmistakable and significant indications of the appreciation of colonial connexion. That it is the resolve of England to invest us with the attributes, and compel us to assume the burdens of independence, is no longer problematical. The threatened withdrawal of her troops from other colonies—the continuance of her military protection to ourselves only on the condition that we shall defray the attendant expenditure, betoken intentions towards our country, against which it is weakness in us not to provide. An overruling conviction, then, of its necessity, and a high sense of the duty we owe to our country, a duty we can neither disregard nor postpone, impel us to the idea of separation; and whatever negotiations may eventuate with Great Britain, a grateful liberality on the part of Canada should mark every proceeding.

The proposed Union would render Canada a field for American capital, into which it would enter as freely for the prosecution of public works and private enterprise as into any of the present States. It would equalize the value of real estate upon both sides of the boundary, thereby probably doubling at once the entire present value of property in Canada, whilst, by giving stability to our institutions and introducing prosperity, it would raise our public, corporate, and private credit. It would increase our commerce both with the United States and foreign countries, and would not necessarily diminish to any great extent our intercourse with Great Britain, into which our products would for the most part enter on the same terms as at present. It would render our rivers and canals the highway for the immigration to, and exports from, the West, to the incalculable benefit of our country. It would also introduce manufactures into Canada as rapidly as they have been introduced into the Northern States; and to Lower Canada especially, where water privileges and labour are abundant and cheap, it would attract manufacturing capital, enhancing the value of property and agricultural produce, and giving remunerative employment to what is at present a comparatively non-producing population. Nor would the United States merely furnish the capital for our

Digitized by Google

manufactures. They would also supply for them the most extensive market in the world, without the intervention of a Custom-House officer. Railways would forthwith be constructed by American capital as feeders for all the great lines now approaching our frontiers; and railway enterprise in general would doubtless be as active and prosperous among us as among our neighbours. The value of our agricultural produce would be raised at once to a par with that of the United States, while agricultural implements and many of the necessaries of life, such as tea, coffee, and sugar, would be greatly reduced in price.

The value of our timber would also be greatly enhanced by free access to the American market, where it bears a high price, but is subject to an onerous duty. At the same time there is every reason to believe that our shipbuilders, as well at Quebec as on the Great Lakes, would find an unlimited market in all the ports of the American continent. It cannot be doubted that the shipping trade of the United States must greatly increase. It is equally manifest that, with them, the principal material in the construction of ships is rapidly diminishing, while we possess vast territories, covered with timber of excellent quality, which would be equally available as it is now, since under the free trade system our vessels would sell as well in England after annexation as before.

The simple and economical State Government, in which direct responsibility to the people is a distinguishing feature, would be substituted for a system at once cumbrous and expensive.

In place of war and the alarms of war with a neighbour, there would be peace and amity between this country and the United States. Disagreement between the United States and her chief, if not only, rival among nations would not make the soil of Canada the sanguinary arena for their disputes, as under our existing relations must necessarily be the case. That such is the unenviable condition of our state of dependence upon Great Britain is known to the whole world, and how far it may conduce to keep prudent capitalists from making investments in the country, or wealthy settlers from selecting a fore-doomed battle-field for the home of themselves and their children, it needs no reasoning on our part to elucidate.

Digitized by Google

But other advantages than those having a bearing on our material interests may be foretold. It would change the ground of political contest between races and parties, allay and obliterate those irritations and conflicts of rancour and recrimination which have hitherto disfigured our social fabric. Already in anticipation has its harmonious influence been felt—the harbinger may it be hoped of a lasting oblivion of dissensions among all classes, creeds, and parties in the country. Changing a subordinate for an independent condition, we would take our station among the nations of the earth. We have now no voice in the affairs of the Empire, nor do we share in its honours or emoluments. England is our parent State, with whom we have no equality, but towards whom we stand in the simple relation of obedience. But as citizens of the United States the public service of the nation would be open to us—a field for high and honourable distinction on which we and our posterity might enter on terms of perfect equality.

Nor would the amicable separation of Canada from Great Britain be fraught with advantages to us alone. The relief to the Parent State from the large expenditure now incurred in the military occupation of the country—the removal of the many causes of collision with the United States, which result from the contiguity of mutual territories so extensive, the benefit of the larger market which the increasing prosperity of Canada would create, are considerations which in the minds of many of her ablest statesmen, render our incorporation with the United States a desirable consummation.

To the United States also the annexation of Canada presents many important inducements. The withdrawal from the borders of so powerful a nation, by whom in time of war the immense and growing commerce of the lakes would be jeopardized, the ability to dispense with the costly but ineffectual revenue establishment over a frontier of many hundred miles,—the large accession to their income from our Customs,—the unrestricted use of the St. Lawrence, the natural highway from the Western States to the ocean,—are objects for the attainment of which the most substantial equivalents would undoubtedly be conceded.

Digitized by Google

FELLOW COLONISTS:

We have thus laid before you our views and convictions on a momentous question, involving a change which, though contemplated by many of us with varied feelings and emotions, we all believe to be inevitable—one which it is our duty to provide for and lawfully to promote.

We address you without prejudice or partiality,—in the spirit of sincerity and truth,—in the interest of our common country,—and our single aim is its safety and welfare. If to your judgment and reason our object and aim be at this time deemed laudable and right, we ask an oblivion of past dissensions; and from all, without distinction or origin, party or creed, that earnest and cordial co-operation in such lawful, prudent and judicious means as may best conduct us to our common destiny.

TO EARL GREY.

November 8, 1849.

The fact is, that although both the States and Canada export to the same neutral market, prices on the Canada side of the line are lower than on the American, by the amount of the duty which the Americans levy. So long as this state of things continues there will be discontent in this country; deep, growing discontent. You will not, I trust, accuse me of having deceived you on this point. I have always said that I am prepared to assume the responsibility of keeping Canada quiet, with a much smaller garrison than we have now, and without any tax on the British consumer in the shape of protection to Canadian products, if you put our trade on as good a footing as that of our American neighbours; but if things remain on their present footing in this respect, there is nothing before us but violent agitation, ending in convulsion or annexation. It is better that I should worry you with my importunity, than that I should be chargeable with having neglected to give you due warning. You have a great opportunity before you—obtain reciprocity for us, and I venture to predict that you will be able shortly to point to this hitherto turbulent colony with satisfaction, in illustration of the tendency of self-

Digitized by Google

government and freedom of trade to beget contentment and material progress. Canada will remain attached to England, though tied to her neither by the golden links of protection, nor by the meshes of old-fashioned colonial office jobbing and chicane. But if you allow the Americans to withhold the boon, which you have the means of extorting, if you will, I much fear that the closing period of the connection between Great Britain and Canada will be marked by incidents which will damp the ardour of those who desire to promote human happiness by striking shackles either off commerce or off men.

To Lord John Russell.

It is of such vital importance that your Lordship should rightly apprehend the nature of these difficulties, and the state of public opinion in Canada at this conjuncture, that I venture, at the hazard of committing an indiscretion, to add a single observation on this head. Let me then assure your Lordship, and I speak advisedly in offering this assurance, that the disaffection now existing in Canada, whatever be the forms with which it may clothe itself, is due mainly to commercial causes. I do not say that there is no discontent on political grounds. Powerful individuals and even classes of men are, I am well aware, dissatisfied with the conduct of affairs. But I make bold to affirm that so general is the belief that, under the present circumstances of our commercial condition, the colonists pay a heavy pecuniary fine for their fidelity to Great Britain, that nothing but the existence to an unwonted degree of political contentment among the masses has prevented the cry for annexation from spreading, like wildfire, through the Province. This, as your Lordship will perceive, is a new feature in Canadian politics. The plea of self-interest, the most powerful weapon, perhaps, which the friends of British connection have wielded in times past, has not only been wrested from my hands, but transferred since 1846 to those of the adversary. I take the liberty of mentioning a fact, which seems better to illustrate the actual condition of affairs in these respects than many arguments. I have lately spent several weeks in the district of Niagara.

Digitized by Google

Canadian Niagara is separated from the state of New York by a narrow stream, spanned by a bridge, which it takes a foot passenger about three minutes to cross. The inhabitants are for the most part U.E. loyalists,[1] and differ little in habits or modes of thought and expression from their neighbours. Wheat is their staple product—the article which they exchange for foreign comforts and luxuries. Now it is the fact that a bushel of wheat grown on the Canadian side of the line has fetched this year in the market, on an average, from 9*d.* to 1*s.* less than the same quantity and quality of the same article grown on the other. Through their district council, a body elected under a system of very extended suffrage, these same inhabitants of Niagara have protested against the Montreal annexation movement. They have done so (and many other district councils in Upper Canada have done the same) under the impression that it would be base to declare against England at a moment when England has given a signal proof of her determination to concede constitutional Government in all its plenitude to Canada. I am confident, however, that the large majority of the persons who have thus protested, firmly believe that their annexation to the United States would add one-fourth to the value of the produce of their farms.

I need say no more than this to convince your Lordship, that while this state of things subsists (and I much fear that no measure but the establishment of reciprocal trade between Canada and the States, or the imposition of a duty on the produce of the States when imported into England, will remove it), arguments will not be wanting to those who seek to seduce Canadians from their allegiance.

To Earl Grey.

It is not for me to dispute the point with free-traders, when they allege that all parts of the Empire are suffering from the effects of free-trade, and that Canadians must take their chance with others. But I must be permitted to remark, that the Canadian case differs from others,

[1] United Empire Loyalists, *i.e.*, descendants of the Loyalists of the American War.

Digitized by Google

both as respects the immediate cause of the suffering, and still more as respects the means which the sufferers possess of finding for themselves a way of escape. As to the former point I have only to say that, however severe the pressure in other cases attendant on the transition from protection to free-trade, there is none which presents so peculiar a specimen of legislative legerdemain as the Canadian, where an interest was created in 1843 by a Parliament in which the parties affected had no voice, only to be knocked down by the same Parliament in 1846. But it is the latter consideration which constitutes the speciality of the Canadian case. What in point of fact *can* the other suffering interests, of which the *Times* writes, do? There may be a great deal of grumbling, and a gradual move towards republicanism, or even communism; but this is an operose and empirical process, the parties engaged in it are full of misgivings, and their ranks at every step in advance are thinned by desertion. Not so with the Canadians. The remedy offered to them, such as it is, is perfectly definite and intelligible. They are invited to form a part of a community, which is neither suffering nor free-trading, which never makes a bargain without getting at least twice as much as it gives; a community, the members of which have been within the last few weeks pouring into their multifarious places of worship, to thank God that they are exempt from the ills which afflict other men, from those more especially which afflict their despised neighbours, the inhabitants of North America, who have remained faithful to the country which planted them.

Now, I believe, that if these facts be ignored, it is quite impossible to understand rightly the present state of opinion in Canada, or to determine wisely the course which the British Government and Parliament ought to pursue. It may suit the policy of the English free-trade press to represent the difficulties of Canada as the consequence of having a fool for a Governor-General; but, if it be permitted me to express an opinion on a matter of so much delicacy, I venture to doubt whether it would be safe to act on this hypothesis. My conviction on the contrary is, that motives of self-interest of a very gross and palpable description are suggesting treasonable courses to the Canadian mind at present, and that it is

Digitized by Google

a political sentiment, a feeling of gratitude for what has been done and suffered this year in the cause of Canadian self-government, which is neutralising these suggestions.

To Earl Grey.

November 16, 1849.

Very much, as respects the result of this annexation movement, depends upon what you do at home. I cannot say what the effect may be if the British Government and press are lukewarm on the subject. The annexationists will take heart, but in a tenfold greater degree the friends of the connection will be discouraged. If it be admitted that separation *must* take place, sooner or later, the argument in favour of a present move seems to be almost irresistible. I am prepared to contend that with responsible government, fairly worked out with free-trade, there is no reason why the colonial relation should not be indefinitely maintained. But look at my present difficulty, which may be increased beyond calculation, if indiscreet expressions be made use of during the present crisis. The English Government thought it necessary, in order to give moral support to their representative in Ireland, to assert in the most solemn manner that the Crown never would consent to the severance of the Union; although, according to the O'Connell doctrine, the allegiance to the Crown of the Irish was to be unimpaired notwithstanding such severance. But when I protest against Canadian projects for dismembering the empire, I am always told "the most eminent statesmen in England have over and over again told us, that whenever we chose we might separate. Why, then, blame us for discussing the subject?"

Digitized by Google

THE TARIFF CONTROVERSY

WHEN the Canadian tariff of 1859 proved to be of a distinctly Protective character, various petitions against it were sent from British Chambers of Commerce, and on August 13 the Colonial Secretary, the Duke of Newcastle, wrote to the Governor-General, Sir Edmund Head, saying[1]:

I have the honour to transmit to you the copy of a memorial which has been addressed to me by the Chamber of Commerce and manufacturers at Sheffield, representing the injury anticipated to their commerce by the increased duties which have been imposed on imports by the late Canada tariff.

I request that you will place this representation in the hands of your Executive Council, and observe to that body that I cannot but feel that there is much force in the argument of the Sheffield manufacturers. Practically, this heavy duty operates differentially in favour of the United States, in consequence of the facility for smuggling which so long a line of frontier affords, and the temptation to embark in it which a duty of 20 per cent. offers. Regarded as a fiscal expedient, the measure is impolitic; for, whilst any increase of contraband trade must be at the expense of the Exchequer, the diminution of foreign importations will probably more than neutralise the additional revenue derived from the higher duty.

Whenever the authenticated act of the Canadian Parliament on this subject arrives, I may probably feel that I can take no other course than signify to you the Queen's assent to it, notwithstanding the objections

[1] *Parliamentary Reports and Papers*, 1864, xli: Papers relating to Customs Duties, Canada, pp. 11, 12.

Digitized by Google

raised against the law in this country ; but I consider it my duty no less to the colony than to the Mother Country, to express my regret that the experience of England, which has fully proved the injurious effect of the protective system, and the advantage of low duties upon manufactures, both as regards trade and revenue, should be lost sight of, and that such an Act as the present should have been passed. I much fear the effect of the law will be that the greater part of the new duty will be paid to the Canadian producer by the colonial consumer, whose interests, as it seems to me, have not been sufficiently considered on this occasion.

In reply, Mr. (afterwards Sir) A. T. Galt, the Canadian Finance Minister, sent a report to a special Committee of the Canadian Executive Council, which was forwarded by it to the Secretary of State for the Colonies, with the brief remark that "The Committee concur in the views expressed by the Minister of Finance."

In this report Galt, before replying in detail to the economic objections of His Grace, made the following vigorous statement on the constitutional question :

It is to be deeply regretted that His Grace should have given to so great a degree the weight of his sanction to the statements in the Memorial, without having previously afforded to the Government of Canada the opportunity of explaining the fiscal policy of the province, and the grounds upon which it rests. The representations upon which His Grace appears to have formed his opinions are those of a provincial town in England, professedly actuated by selfish motives ; and it may fairly be claimed for Canada, that the deliberate acts of its Legislature, representing nearly three millions of people, should not have been condemned by the Imperial Government on such authority, until the fullest opportunity of explanation had been afforded. It is believed that nothing in the Legislation of Canada warrants the expressions of disapproval which are contained in the Despatch of His Grace, but that, on the contrary, due regard has been had to the welfare and prosperity of Her Majesty's Canadian subjects.

Digitized by Google

From expressions used by His Grace in reference to the sanction of the Provincial Customs Act, it would appear that he had even entertained the suggestion of its disallowance; and though happily Her Majesty has not been so advised, yet the question having been thus raised, and the consequences of such a step, if ever adopted, being of the most serious character, it becomes the duty of the Provincial Government distinctly to state what they consider to be the position and rights of the Canadian Legislature.

Respect to the Imperial Government must always dictate the desire to satisfy them that the policy of this country is neither hastily nor unwisely formed; and that due regard is had to the interests of the Mother Country as well as of the Province. But the Government of Canada acting for its Legislature and people cannot, through those feelings of deference which they owe to the Imperial authorities, in any way waive or diminish the right of the people of Canada to decide for themselves both as to the mode and extent to which taxation shall be imposed. The Provincial Ministry are at all times ready to afford explanations in regard to the acts of the Legislature to which they are party; but subject to their duty and allegiance to Her Majesty, their responsibility in all general questions of policy must be to the Provincial Parliament, by whose confidence they administer the affairs of the country; and in the imposition of taxation, it is so plainly necessary that the Administration and the people should be in accord, that the former cannot admit responsibility or require approval beyond that of the local Legislature. Self-government would be utterly annihilated if the views of the Imperial Government were to be preferred to those of the people of Canada. It is therefore the duty of the present Government distinctly to affirm the right of the Canadian Legislature to adjust the taxation of the people in the way they deem best, even if it should unfortunately happen to meet the disapproval of the Imperial Ministry. Her Majesty cannot be advised to disallow such Acts, unless her advisers are prepared to assume the administration of the affairs of the Colony irrespective of the views of its inhabitants.

The Imperial Government are not responsible for the debts and engagements of Canada. They do not main-

Digitized by Google

tain its judicial, educational, or civil service; they contribute nothing to the internal government of the country, and the Provincial Legislature acting through a Ministry directly responsible to it, has to make provision for all these wants; they must necessarily claim and exercise the widest latitude as to the nature and extent of the burthens to be placed upon the industry of the people. The Provincial Government believes that His Grace must have their own conviction on this important subject; but, as serious evil would have resulted had His Grace taken a different course, it is wiser to prevent future complication by distinctly stating the position that must be maintained by every Canadian Administration.

Digitized by Google

FEDERATION

THE question of a Federal Union of the scattered provinces of British North America had never been wholly forgotten by the leaders of Canadian thought and opinion.[1] In 1864 it came suddenly to the front. Misunderstandings between French and English had made the Union of 1841 unworkable, and brought about an absolute deadlock in the Canadian Legislature. Between May, 1861, and June, 1864, two general elections were held, and three Governments were formed and defeated. As a result of this, in June, 1864, the chief men of both parties united in a coalition Ministry pledged to carry Federation.[2]

[1] For a list of the chief references to the subject from 1784 to 1867, see George Johnson, *Alphabet of First Things in Canada* (3rd edition, Ottawa, 1897), pp. 55-61.

[2] Of the leaders, Mr. (afterwards Sir) John A. Macdonald was the most prominent Conservative, and Mr. George Brown the chief Liberal. The following confidential Memorandum, drawn up at the time, shows the progress of the negotiations (see Pope, *op. cit.*, vol. i., pp. 844-50):

"The Government are prepared to state that, immediately after the prorogation, they will address themselves, in the most earnest manner, to the negotiation for a confederation of all the British North American Provinces.

"That, failing a successful issue to such negotiations, they are prepared to pledge themselves to legislation during the next session of Parliament for the purpose of remedying existing difficulties by introducing the federal principle for Canada alone, coupled with such provisions as will permit the Maritime Provinces and the North-Western Territory to be hereafter incorporated into the Canadian system.

"That for the purpose of carrying on the negotiations and settling the details of the promised legislation, a Royal Commission shall be issued, consisting of three members of the Government and three

Digitized by Google

At about the same time the Legislatures of the provinces of Nova Scotia, New Brunswick, and Prince Edward Island, where the idea of Union had been frequently discussed, authorized a Convention on the subject of a Maritime Union. To this Conference, which met at Charlottetown on September 1, 1864, the Canadian Government obtained permission to send delegates, and such progress was made that the Conference adjourned to meet later in the year at Quebec, to discuss the wider question. Here they were joined by representatives from Newfoundland, and from October 10 to 28 secret sessions were held, at which seventy-two resolutions were passed, which formed the basis of all subsequent discussion.[1] These resolutions were submitted by the delegates to their respective Legislatures, and after many

---

members of the Opposition, of whom Mr. Brown shall be one; and the Government pledge themselves to give all the influence of the Administration to secure to the said Commission the means for advancing the great object in view.

"That, subject to the House permitting the Government to carry through the public business, no dissolution of Parliament shall take place, but the Administration will again meet the present House."

Shortly after 6 p.m. the parties met at the same place, when Mr. Brown stated that, without communicating the contents of the confidential paper entrusted to him, he had seen a sufficient number of his friends to warrant him in expressing the belief that the bulk of his friends would, as a compromise, accept a measure for the Federative Union of Canada, with provision for the future admission of the Maritime Colonies and the North-West Territory. To this it was replied that the Administration could not consent to waive the larger question; but, after considerable discussion, an amendment to the original proposal was agreed to in the following terms, subject to the approval, on Monday, of the Cabinet and of His Excellency:

"The Government are prepared to pledge themselves to bring in a measure next session for the purpose of removing existing difficulties by introducing the federal principle into Canada, coupled with such provisions as will permit the Maritime Provinces and the North-West Territory to be incorporated into the same system of government.

"And the Government will seek, by sending representatives to the Lower Provinces and to England, to secure the assent of those interests which are beyond the control of our own legislation to such a measure as may enable all British North America to be united under a General Legislature based upon the federal principle."

[1] See Houston, *op. cit.*, Appendix F.

Digitized by Google

fluctuations and disappointments,[1] in December, 1866, deputations from Upper Canada, Lower Canada, Nova Scotia, and New Brunswick, met in London under the presidency of the Colonial Secretary, Lord Carnarvon, and worked out the details of the British North America Act (30 and 31 Victoria, cap. 3), which was signed by the Queen on March 29, 1867, and came into operation on July 1 of the same year.[2]

The debates in the Canadian Parliament in the session of 1865, on the motion to adopt the "Quebec Resolutions," were printed in the same year under the title of *Debates in the Parliament of Canada on the Confederation of British North America*, and form a closely

[1] In the negotiations of 1865-66, and in the discussions at London, Sir John Macdonald showed to especial advantage. See the interesting passage in the *Letters of Frederic, Lord Blachford*, edited by G. E. Marindin (London, 1896):

"They held many meetings, at which I was always present. Lord Carnarvon was in the chair, and I was rather disappointed in his power of presidency. Macdonald was the ruling genius and spokesman, and I was very greatly struck by his power of management and adroitness. The French delegates were keenly on the watch for anything which weakened their securities; on the contrary, the Nova Scotia and New Brunswick delegates were very jealous of concession to the *a riérée* province; while one main stipulation in favour of the French was open to constitutional objections on the part of the Home Government.

"Macdonald had to argue the question with the Home Government on a point on which the slightest divergence from the narrow lines already agreed on in Canada was watched for—here by the French and there by the English—as eager dogs watch a rat-hole; a snap on one side might have provoked a snap on the other, and put an end to the concord. He stated and argued the case with cool, ready fluency, while at the same time you saw that every word was measured, and that, while he was making for a point ahead, he was never for a moment unconscious of any of the rocks among which he had to steer" (pp. 301-302).

It must not be forgotten that from the first the Imperial Government used all its influence, direct and indirect, in favour of the scheme. But for the almost unconstitutional steps taken by the Governor-General, Lord Monck, and by more than one Lieutenant-Governor, it is doubtful if all the wisdom of Macdonald and all the fire of Brown could have carried Federation. Consult Pope, *op. cit.*, pp. 296-303, 372-73.

[2] See Joseph Pope, *Confederation Documents*, in which a number of drafts of the Act are given.

Digitized by Google

printed volume of 1,032 pages, from which we have taken the following extracts :

Monday, February 6, 1865.

Hon. Attorney-General Macdonald : I have the honour of being charged, on behalf of the Government, to submit a scheme for the Confederation of all the British North American Provinces — a scheme which has been received, I am glad to say, with general, if not universal, approbation in Canada. The scheme, as propounded through the press, has received almost no opposition. While there may be occasionally, here and there, expressions of dissent from some of the details, yet the scheme as a whole has met with almost universal approval, and the Government has the greatest satisfaction in presenting it to this House. This subject, which now absorbs the attention of the people of Canada, and of the whole of British North America, is not a new one. For years it has more or less attracted the attention of every statesman and politician in these provinces, and has been looked upon by many far-seeing politicians as being eventually the means of deciding and settling very many of the vexed questions which have retarded the prosperity of the colonies as a whole, and particularly the prosperity of Canada. The subject was pressed upon the public attention by a great many writers and politicians ; but I believe the attention of the Legislature was first formally called to it by my honourable friend the Minister of Finance.[1] Some years ago, in an elaborate speech, my honourable friend, while an independent member of Parliament, before being connected with any Government, pressed his views on the Legislature at great length and with his usual force. But the subject was not taken up by any party as a branch of their policy, until the formation of the Cartier-Macdonald Administration in 1858, when the Confederation of the colonies was announced as one of the measures which they pledged themselves to attempt, if possible, to bring to a satisfactory conclusion. In pursuance of that promise, the letter or despatch, which has been so much and so freely commented upon in the press and in this House, was addressed by three of

[1] Mr. A. T. Galt.

Digitized by Google

the members of that Administration to the Colonial Office. The subject, however, though looked upon with favour by the country, and though there were no distinct expressions of opposition to it from any party, did not begin to assume its present proportions until last session. Then, men of all parties and all shades of politics became alarmed at the aspect of affairs. They found that such was the opposition between the two sections of the province, such was the danger of impending anarchy, in consequence of the irreconcilable differences of opinion, with respect to representation by population, between Upper and Lower Canada, that unless some solution of the difficulty was arrived at, we would suffer under a succession of weak governments,—weak in numerical support, weak in force, and weak in power of doing good. All were alarmed at this state of affairs. We had election after election,—we had ministry after ministry, with the same result. Parties were so equally balanced, that the vote of one member might decide the fate of the Administration, and the course of legislation for a year or a series of years. This condition of things was well calculated to arouse the earnest consideration of every lover of his country, and I am happy to say it had that effect. None were more impressed by this momentous state of affairs, and the grave apprehensions that existed of a state of anarchy destroying our credit, destroying our prosperity, destroying our progress, than were the members of this present House; and the leading statesmen on both sides seemed to have come to the common conclusion, that some step must be taken to relieve the country from the dead-lock and impending anarchy that hung over us.—With that view, my colleague, the President of the Council,[1] made a motion founded on the despatch addressed to the Colonial Minister, to which I have referred, and a committee was struck, composed of gentlemen of both sides of the House, of all shades of political opinion, without any reference to whether they were supporters of the Administration of the day or belonged to the Opposition, for the purpose of taking into calm and full deliberation the evils which threatened the future of Canada. That motion of my honourable friend resulted most happily. The committee, by a wise provision,—and in order that each member of the committee might

[1] Mr. George Brown.

Digitized by Google

have an opportunity of expressing his opinions without being in any way compromised before the public, or with his party, in regard either to his political friends or to his political foes,—agreed that the discussion should be freely entered upon without reference to the political antecedents of any of them, and that they should sit with closed doors, so that they might be able to approach the subject frankly and in a spirit of compromise. The committee included most of the leading members of the House,—I had the honour myself to be one of the number,—and the result was that there was found an ardent desire,—a creditable desire, I must say,—displayed by all the members of the committee to approach the subject honestly, and to attempt to work out some solution which might relieve Canada from the evils under which she laboured. The report of that committee was laid before the House, and then came the political action of the leading men of the two parties in this House, which ended in the formation of the present Government. The principle upon which that Government was formed has been announced, and is known to all. It was formed for the very purpose of carrying out the object which has now received to a certain degree its completion, by the resolutions I have had the honour to place in your hands. As has been stated, it was not without a great deal of difficulty and reluctance that that Government was formed. The gentlemen who compose this Government had for many years been engaged in political hostilities to such an extent that it affected even their social relations. But the crisis was great, the danger was imminent, and the gentlemen who now form the present Administration found it to be their duty to lay aside all personal feelings, to sacrifice in some degree their position, and even to run the risk of having their motives impugned, for the sake of arriving at some conclusion that would be satisfactory to the country in general. The present resolutions were the result. And, as I said before, I am proud to believe that the country has sanctioned, as I trust that the representatives of the people in this House will sanction, the scheme which is now submitted for the future government of British North America. Everything seemed to favour the project, and everything seemed to show that the present was the time, if ever, when this great union between all Her Majesty's subjects dwelling in British

Digitized by Google

North America should be carried out. When the Government was formed, it was felt that the difficulties in the way of effecting a union between all the British North American Colonies were great—so great as almost, in the opinion of many, to make it hopeless. And with that view it was the policy of the Government, if they could not succeed in procuring a union between all the British North American Colonies, to attempt to free the country from the dead-lock in which we were placed in Upper and Lower Canada, in consequence of the differsnce of opinion between the two sections, by having a severance to a certain extent of the present union between the two provinces of Upper and Lower Canada, and the substitution of a Federal Union between them. Most of us, however, I may say, all of us, were agreed—and I believe every thinking man will agree—as to the expediency of effecting a union between all the provinces, and the superiority of such a design, if it were only practicable, over the smaller scheme of having a Federal Union between Upper and Lower Canada alone. By a happy concurrence of events, the time came when that proposition could be made with a hope of success. By a fortunate coincidence the desire for union existed in the Lower Provinces, and a feeling of the necessity of strengthening themselves by collecting together the scattered colonies on the sea-board, had induced them to form a convention of their own for the purpose of effecting a union of the Maritime Provinces of Nova Scotia, New Brunswick, and Prince Edward Island, the legislatures of those colonies having formally authorized their respective governments to send a delegation to Prince Edward Island for the purpose of attempting to form a union of some kind. Whether the union should be federal or legislative was not then indicated, but a union of some kind was sought for the purpose of making of themselves one people instead of three. We, ascertaining that they were about to take such a step, and knowing that if we allowed the occasion to pass, if they did indeed break up all their present political organizations and form a new one, it could not be expected that they would again readily destroy the new organization which they had formed,—the union of the three provinces on the sea-board,—and form another with Canada, knowing this, we availed ourselves of the opportunity, and asked if they would receive a deputation

Digitized by Google

from Canada, who would go to meet them at Charlottetown, for the purpose of laying before them the advantages of a larger and more extensive union, by the junction of all the provinces in one great government under our common Sovereign. They at once kindly consented to receive and hear us. They did receive us cordially and generously, and asked us to lay our views before them. We did so at some length, and so satisfactory to them were the reasons we gave; so clearly, in their opinion, did we show the advantages of the greater union over the lesser, that they at once set aside their own project, and joined heart and hand with us in entering into the larger scheme, and trying to form, as far as they and we could, a great nation and a strong government.[1] Encouraged by this arrangement, which, however, was altogether unofficial and unauthorized, we returned to Quebec, and then the Government of Canada invited the several governments of the sister colonies to send a deputation here from each of them for the purpose of considering the question, with something like authority from their respective governments. The result was, that when we met here on the 10th of October, on the first day on which we assembled, after the full and free discussions which had taken place at Charlottetown, the first resolution now before this House was passed unanimously, being received with acclamation, as in the opinion of every one who heard it, a proposition which

[1] A less heroic account of these proceedings was given by the Hon. John S. Macdonald, afterwards Premier of Ontario: "In New Brunswick, Nova Scotia, and Prince Edward Island, a union took place between the Government and the Opposition, for the purpose of arranging a plan by which these provinces should be joined together. They had the authority of their respective Governments and Legislatures before entering into that conference. They met together by deliberate arrangement, with full consent, unlike the manner in which the gentlemen opposite precipitated themselves into a union fever, growing out of a political contingency. When the delegates went to Charlottetown, from their respective provinces, to treat of matters of great importance to the people of those provinces, and considered it to be a desirable object to obtain the union of the Maritime Provinces, they were interrupted in their deliberations by the members of the Canadian Government. Greater inducements were then offered them, and they were filled with higher hopes and expectations of the good things to be derived from the Confederation of all the provinces. Lieutenant-governorships, chief-justiceships and life-memberships of the Legislative Council were all held out in the prospective by the Canadian Ministers."

Digitized by Google

ought to receive, and would receive, the sanction of each government and each people. The resolution is, "That the best interests and present and future prosperity of British North America will be promoted by a Federal Union under the Crown of Great Britain, provided such union can be effected on principles just to the several provinces." It seemed to all the statesmen assembled—and there are great statesmen in the Lower Provinces, men who would do honour to any government and to any legislature of any free country enjoying representative institutions—it was clear to them all that the best interests and present and future prosperity of British North America would be promoted by a Federal Union under the Crown of Great Britain. And it seems to me, as to them, and I think it will so appear to the people of this country, that, if we wish to be a great people; if we wish to form—using the expression which was sneered at the other evening—a great nationality, commanding the respect of the world, able to hold our own against all opponents, and to defend those institutions we prize: if we wish to have one system of government, and to establish a commercial union, with unrestricted free trade, between people of the five provinces, belonging, as they do, to the same nation, obeying the same Sovereign, owning the same allegiance, and being, for the most part, of the same blood and lineage: if we wish to be able to afford to each other the means of mutual defence and support against aggression and attack—this can only be obtained by a union of some kind between the scattered and weak boundaries composing the British North American Provinces.

Reasons

The very mention of the scheme is fitted to bring with it its own approbation. Supposing that in the spring of the year 1865, half a million of people were coming from the United Kingdom to make Canada their home, although they brought only their strong arms and willing hearts; though they brought neither skill nor experience nor wealth, would we not receive them with open arms, and hail their presence in Canada as an important addition to our strength? But when, by the proposed union, we not only get nearly a million of people to join us—when they contribute not only their numbers, their physical strength, and their desire to benefit their position, but when we know that

Digitized by Google

they consist of old-established communities, having a large amount of realized wealth,—composed of people possessed of skill, education and experience in the ways of the New World—people who are as much Canadians, I may say, as we are—people who are imbued with the same feelings of loyalty to the Queen, and the same desire for the continuance of the connection with the Mother Country as we are, and at the same time have a like feeling of ardent attachment for this, our common country, for which they and we would alike fight and shed our blood, if necessary—when all this is considered, argument is needless to prove the advantage of such a union.

There were only three modes—if I may return for a moment to the difficulties with which Canada was surrounded—only three modes that were at all suggested, by which the dead-lock in our affairs, the anarchy we dreaded, and the evils which retarded our prosperity, could be met or averted. One was the dissolution of the union between Upper and Lower Canada, leaving them as they were before the union of 1841. I believe that that proposition, by itself, had no supporters. It was felt by everyone that, although it was a course that would do away with the sectional difficulties which existed—though it would remove the pressure on the part of the people of Upper Canada for representation based upon population—and the jealousy of the people of Lower Canada lest their institutions should be attacked and prejudiced by that principle in our representation; yet it was felt by every thinking man in the province that it would be a retrograde step, which would throw back the country to nearly the same position as it occupied before the union—that it would lower the credit enjoyed by United Canada—that it would be the breaking up of the connection which had existed for nearly a quarter of a century, and, under which, although it had not been completely successful, and had not allayed altogether the local jealousies that had their root in circumstances which arose before the union, our province, as a whole, had nevertheless prospered and increased. It was felt that a dissolution of the union would have destroyed all the credit that we have gained by being a united province, and would have left us two weak and ineffective governments, instead of one powerful and united people.

Digitized by Google

The next mode suggested was the granting of representation by population. Now, we all know the manner in which that question was and is regarded by Lower Canada; that while in Upper Canada the desire and cry for it was daily augmenting, the resistance to it in Lower Canada was proportionably increasing in strength. Still, if some such means of relieving us from the sectional jealousies which existed between the two Canadas, if some such solution of the difficulties as Confederation had not been found, then representation by population must eventually have been carried; no matter though it might have been felt in Lower Canada as being a breach of the Treaty of Union, no matter how much it might have been felt by the Lower Canadians that it would sacrifice their local interests, it is certain that in the progress of events representation by population would have been carried; and, had it been carried—I speak here of my own individual sentiments—I do not think it would have been for the interest of Upper Canada. For though Upper Canada would have felt that it had received what it claimed as a right, and had succeeded in establishing its right, yet it would have left the Lower Province with a sullen feeling of injury and injustice. The Lower Canadians would not have worked cheerfully under such a change of system, but would have ceased to be what they are now—a nationality, with representatives in Parliament, governed by general principles, and dividing according to their political opinions—and would have been in great danger of becoming a faction, forgetful of national obligations, and only actuated by a desire to defend their own sectional interests, their own laws, and their own institutions.

The third and only means of solution for our difficulties was the junction of the provinces either in a Federal or a Legislative Union. Now, as regards the comparative advantages of a Legislative and a Federal Union, I have never hesitated to state my own opinions. I have again and again stated in the House, that, if practicable, I thought a Legislative Union would be preferable. I have always contended that if we could agree to have one government and one parliament, legislating for the whole of these peoples, it would be the best, the cheapest, the most vigorous, and the strongest system of government we could adopt. But,

Digitized by Google

on looking at the subject in the Conference, and discussing the matter as we did, most unreservedly, and with a desire to arrive at a satisfactory conclusion, we found that such a system was impracticable. In the first place, it would not meet the assent of the people of Lower Canada, because they felt that in their peculiar position—being in a minority, with a different language, nationality and religion from the majority—in case of a junction with the other provinces, their institutions and their laws might be assailed, and their ancestral associations, on which they prided themselves, attacked and prejudiced; it was found that any proposition which involved the absorption of the individuality of Lower Canada—if I may use the expression—would not be received with favour by her people. We found too, that though their people speak the same language and enjoy the same system of law as the people of Upper Canada, a system founded on the common law of England, there was as great a disinclination on the part of the various Maritime Provinces to lose their individuality, as separate political organizations, as we observed in the case of Lower Canada herself. Therefore, we were forced to the conclusion that we must either abandon the idea of union altogether, or devise a system of union in which the separate provincial organizations would be in some degree preserved. So that those who were, like myself, in favour of a Legislative Union, were obliged to modify their views and accept the project of a Federal Union as the only scheme practicable, even for the Maritime Provinces. Because, although the law of those provinces is founded on the common law of England, yet every one of them has a large amount of law of its own—colonial law framed by itself, and affecting every relation of life, such as the laws of property, municipal and assessment laws; laws relating to the liberty of the subject, and to all the great interests contemplated in legislation; we found, in short, that the statutory law of the different provinces was so varied and diversified that it was almost impossible to weld them into a Legislative Union at once. Why, sir, if you only consider the innumerable subjects of legislation peculiar to new countries, and that every one of those five colonies had particular laws of its own, to which its people have been accustomed and are attached, you will see the difficulty of effecting and work-

Digitized by Google

ing a Legislative Union, and bringing about an assimilation of the local as well as general laws of the whole of the provinces. We in Upper Canada understand from the nature and operation of our peculiar municipal law, of which we know the value, the difficulty of framing a general system of legislation on local matters which would meet the wishes and fulfil the requirements of the several provinces. Even the laws considered the least important, respecting private rights in timber, roads, fencing, and innumerable other matters, small in themselves, but in the aggregate of great interest to the agricultural class, who form the great body of the people, are regarded as of great value by the portion of the community affected by them. And when we consider that every one of the colonies has a body of law of this kind, and that it will take years before those laws can be assimilated, it was felt that at first, at all events, any united legislation would be almost impossible. I am happy to state—and indeed it appears on the face of the resolutions themselves—that, as regards the Lower Provinces, a great desire was evinced for the final assimilation of our laws. One of the resolutions provides that an attempt shall be made to assimilate the laws of the Maritime Provinces and those of Upper Canada, for the purpose of eventually establishing one body of statutory law, founded on the common law of England, the parent of the laws of all those provinces.

One great objection made to a Federal Union was the expense of an increased number of legislatures. I will not enter at any length into that subject, because my honourable friends, the Finance Minister and the President of the Council, who are infinitely more competent than myself to deal with matters of this kind—matters of account—will, I think, be able to show that the expenses under a Federal Union will not be greater than those under the existing system of separate governments and legislatures. Here, where we have a joint legislature for Upper and Lower Canada, which deals not only with subjects of general interest common to all Canada, but with all matters of private right and of sectional interest, and with that class of measures known as "private bills," we find that one of the greatest sources of expense to the country is the cost of legislation. We find, from the admixture of subjects of a general, with

Digitized by Google

those of a private character in legislation, that they mutually interfere with each other; whereas, if the attention of the Legislature was confined to measures of one kind or the other alone, the session of Parliament would not be so protracted and therefore not so expensive as at present. In the proposed Constitution all matters of general interest are to be dealt with by the General Legislature; while the local legislatures will deal with matters of local interest, which do not affect the Confederation as a whole, but are of the greatest importance to their particular sections. By such a division of labour the sittings of the General Legislature would not be so protracted as even those of Canada alone. And so with the local legislatures, their attention being confined to subjects pertaining to their own sections, their sessions would be shorter and less expensive. Then, when we consider the enormous saving that will be effected in the administration of affairs by one General Government —when we reflect that each of the five colonies has a government of its own with a complete establishment of public departments and all the machinery required for the transaction of the business of the country—that each has a separate executive, judicial and militia system—that each province has a separate ministry including a Minister of Militia, with a complete Adjutant-General's Department—that each has a Finance Minister with a full Customs and Excise staff—that each Colony has as large and complete an administrative organization, with as many Executive officers as the General Government will have—we can well understand the enormous saving that will result from a union of all the colonies, from their having but one head and one central system.

We, in Canada, already know something of the advantages and disadvantages of a Federal Union. Although we have nominally a Legislative Union in Canada—although we sit in one Parliament, supposed constitutionally to represent the people without regard to sections or localities, yet we know, as a matter of fact, that since the union in 1841, we have had a Federal Union; that in matters affecting Upper Canada solely, members from that section claimed and generally exercised the right of exclusive legislation, while members from Lower Canada legislated in matters affecting only their own section. We have had a Federal Union in fact, though a Legis-

Digitized by Google

lative Union in name; and in the hot contests of late years, if on any occasion a measure affecting any one section were interfered with by the members from the other—if, for instance, a measure locally affecting Upper Canada were carried or defeated against the wishes of its majority, by one from Lower Canada,—my honourable friend the President of the Council and his friends denounced with all their energy and ability such legislation as an infringement of the rights of the Upper Province. Just in the same way, if any act concerning Lower Canada were pressed into law against the wishes of the majority of her representatives, by those from Upper Canada, the Lower Canadians would rise as one man and protest against such a violation of their peculiar rights. The relations between England and Scotland are very similar to that which obtains between the Canadas. The union between them, in matters of legislation, is of a federal character, because the Act of Union between the two countries provides that the Scottish law cannot be altered, except for the manifest advantage of the people of Scotland. This stipulation has been held to be so obligatory on the Legislature of Great Britain, that no measure affecting the law of Scotland is passed unless it receives the sanction of a majority of the Scottish members in Parliament. No matter how important it may be for the interests of the empire as a whole to alter the laws of Scotland—no matter how much it may interfere with the symmetry of the general law of the United Kingdom, that law is not altered, except with the consent of the Scottish people, as expressed by their representatives in Parliament. Thus, we have, in Great Britain, to a limited extent, an example of the working and effects of a Federal Union, as we might expect to witness them in our own Confederation.

The whole scheme of Confederation, as propounded by the Conference, as agreed to and sanctioned by the Canadian Government, and as now presented for the consideration of the people and the Legislature, bears upon its face the marks of compromise. Of necessity there must have been a great deal of mutual concession. When we think of the representatives of five colonies, all supposed to have different interests, meeting together, charged with the duty of protecting those interests and of pressing the views of their

Digitized by Google

own localities and sections, it must be admitted that had we not met in a spirit of conciliation, and with an anxious desire to promote this union ; if we had not been impressed with the idea contained in the words of the resolution—"That the best interests and present and future prosperity of British North America would be promoted by a Federal Union under the Crown of Great Britain,"—all our efforts might have proved to be of no avail. If we had not felt that, after coming to this conclusion, we were bound to set aside our private opinions on matters of detail, if we had not felt ourselves bound to look at what was practicable, not obstinately rejecting the opinions of others nor adhering to our own ; if we had not met, I say, in a spirit of conciliation, and with an anxious, overruling desire to form one people under one government, we never would have succeeded. With these views, we press the question on this House and the country. I say to this House, if you do not believe that the union of the colonies is for the advantage of the country, that the joining of these five peoples into one nation, under one sovereign, is for the benefit of all, then reject the scheme. Reject it if you do not believe it to be for the present advantage and future prosperity of yourselves and your children. But if, after a calm and full consideration of this scheme, it is believed, as a whole, to be for the advantage of this province—if the House and country believe this union to be one which will ensure for us British laws, British connection, and British freedom —and increase and develop the social, political and material prosperity of the country, then I implore this House and the country to lay aside all prejudices, and accept the scheme which we offer. I ask this House to meet the question in the same spirit in which the delegates met it. I ask each member of this House to lay aside his own opinions as to particular details, and to accept the scheme as a whole if he think it beneficial as a whole. As I stated in the preliminary discussion, we must consider this scheme in the light of a treaty. By a happy coincidence of circumstances, just when an Administration had been formed in Canada for the purpose of attempting a solution of the difficulties under which we laboured, at the same time the Lower Provinces, actuated by a similar feeling, appointed a Conference with a view to a union among themselves, without being cognizant of

Digitized by Google

the position the government was taking in Canada. If it had not been for this fortunate coincidence of events, never, perhaps, for a long series of years would we have been able to bring this scheme to a practical conclusion. But we did succeed. We made the arrangement, agreed upon the scheme, and the deputations from the several governments represented at the Conference went back pledged to lay it before their governments, and to ask the legislatures and people of their respective provinces to assent to it. I trust the scheme will be assented to as a whole. I am sure this House will not seek to alter it in its unimportant details; and, if altered in any important provisions, the result must be that the whole will be set aside, and we must begin *de novo*. If any important changes are made, every one of the colonies will feel itself absolved from the implied obligation to deal with it as a treaty, each province will feel itself at liberty to amend it *ad libitum* so as to suit its own views and interests; in fact, the whole of our labours will have been for nought, and we will have to renew our negotiations with all the colonies for the purpose of establishing some new scheme. I hope the House will not adopt any such a course as will postpone, perhaps for ever, or at all events for a long period, all chances of union. All the statesmen and public men who have written or spoken on the subject admit the advantages of a union, if it were practicable: and now when it is proved to be practicable, if we do not embrace this opportunity the present favourable time will pass away, and we may never have it again. Because, just so surely as this scheme is defeated, will be revived the original proposition for a union of the Maritime Provinces, irrespective of Canada; they will not remain as they are now, powerless, scattered, helpless communities; they will form themselves into a power, which, though not so strong as if united with Canada, will, nevertheless, be a powerful and considerable community, and it will be then too late for us to attempt to strengthen ourselves by this scheme, which, in the words of the resolution, "is for the best interests, and present and future prosperity of British North America."

If we are not blind to our present position, we must see the hazardous situation in which all the great interests of Canada stand in respect to the United States. I am no alarmist. I do not believe in the prospect of immediate

Digitized by Google

war. I believe that the common sense of the two nations will prevent a war; still we cannot trust to probabilities. The Government and Legislature would be wanting in their duty to the people if they ran any risk. We know that the United States at this moment are engaged in a war of enormous dimensions—that the occasion of a war with Great Britain has again and again arisen, and may at any time in the future again arise. We cannot foresee what may be the result; we cannot say but that the two nations may drift into a war as other nations have done before. It would then be too late when war had commenced to think of measures for strengthening ourselves, or to begin negotiations for a union with the sister provinces. At this moment, in consequence of the ill-feeling which has arisen between England and the United States—a feeling of which Canada was not the cause—in consequence of the irritation which now exists, owing to the unhappy state of affairs on this continent, the Reciprocity Treaty, it seems probable, is about to be brought to an end[1]—our trade is hampered by the passport system, and at any moment we may be deprived of permission to carry our goods through United States channels—the bonded goods system may be done away with,[2] and the winter trade through the United States put an end to. Our merchants may be obliged to return to the old system of bringing in during the summer months the supplies for the whole year. Ourselves already threatened, our trade interrupted, our intercourse, political and commercial, destroyed, if we do not take warning now when we have the opportunity, and, while one avenue is threatened to be closed, open another by taking advantage of the present arrangement and the desire of the Lower Provinces to draw closer the alliance between us, we may suffer commercial and political disadvantages it may take long for us to overcome.[3]

[1] The Reciprocity Treaty arranged by Lord Elgin (p. 335) was to last for ten years, at the end of which time it could be terminated by either party at one year's notice. This notice was given by the United States, and the Treaty expired in March, 1866.

[2] Goods imported into Canada, and passing *en route* through the United States, are not examined by the American custom authorities if assurance is given that they will not be opened during transit. The same privilege is extended by Canada to goods destined for the United States.

[3] This argument was used by several speakers. In the Upper House, Sir E. P. Taché said: "If the opportunity which now pre-

Digitized by Google

The Conference having come to the conclusion that a legislative union, pure and simple, was impracticable, our next attempt was to form a government upon federal principles, which would give to the General Government the strength of a legislative and administrative union, while at the same time it preserved that liberty of action for the different sections which is allowed by a Federal Union. And I am strong in the belief that we have hit upon the happy medium in those resolutions, and that we have formed a scheme of government which unites the advantages of both, giving us the strength of a legislative union and the sectional freedom of a federal union, with protection to local interests. In doing so we had the advantage of the experience of the United States. It is the fashion now to enlarge on the defects of the Constitution of the United States, but I am not one of those who look upon it as a failure. I think and believe that it is one of the most skilful works which human intelligence ever created; is one of the most perfect organizations that ever governed a free people. To say that it has some defects is but to say that it is not the work of Omniscience, but of human intellects. We are happily situated in having had the opportunity of watching its operation, seeing its working from its infancy till now. It was in the main formed on the model of the Constitution of Great Britain, adapted to the circumstances of a new country, and was perhaps the only practicable system that could have been adopted under the circumstances existing at the time of its formation. We can now take advantage of the experience of the last seventy-eight years, during which that Constitution has existed, and I am strongly of the belief that we have, in a great measure, avoided in this system which we propose for the adoption of the people of Canada, the defects which time and events have shown to exist in the American Constitution.

In the first place, by a resolution which meets with the universal approval of the people of this country, we have provided that for all time to come, so far as we can legislate for the future, we shall have as the

sented itself were allowed to pass by unimproved, whether we would or would not, we would be forced into the American union by violence, and if not by violence, would be carried upon an inclined plane which would carry us thither insensibly."

Digitized by Google

head of the executive power, the Sovereign of Great Britain. No one can look into futurity and say what will be the destiny of this country. Changes come over nations and peoples in the course of ages. But, so far as we can legislate, we provide that, for all time to come, the Sovereign of Great Britain shall be the Sovereign of British North America. By adhering to the monarchical principle, we avoid one defect inherent in the Constitution of the United States. By the election of the President by a majority and for a short period, he never is the sovereign and chief of the nation. He is never looked up to by the whole people as the head and front of the nation. He is at best but the successful leader of a party. This defect is all the greater on account of the practice of re-election. During his first term of office, he is employed in taking steps to secure his own re-election, and for his party a continuance of power. We avoid this by adhering to the monarchical principle—the Sovereign whom you respect and love. I believe that it is of the utmost importance to have that principle recognized, so that we shall have a Sovereign who is placed above the region of party—to whom all parties look up—who is not elevated by the action of one party nor depressed by the action of another, who is the common head and sovereign of all.

In the Constitution we propose to continue the system of Responsible Government, which has existed in this province since 1841, and which has long obtained in the Mother Country. This is a feature of our Constitution as we have it now, and as we shall have it in the Federation, in which, I think, we avoid one of the great defects in the Constitution of the United States. There the President, during his term of office, is in a great measure a despot, a one-man power, with the command of the naval and military forces—with an immense amount of patronage as head of the Executive, and with the veto power as a branch of the legislature, perfectly uncontrolled by responsible advisers, his cabinet being departmental officers merely, whom he is not obliged by the Constitution to consult with, unless he chooses to do so. With us the Sovereign, or in this country the Representative of the Sovereign, can act only on the advice of his ministers, those ministers being responsible to the people through Parliament.

Digitized by Google

Prior to the formation of the American Union, as we all know, the different states which entered into it were separate colonies. They had no connection with each other further than that of having a common sovereign, just as with us at present. Their constitutions and their laws were different. They might and did legislate against each other, and when they revolted against the Mother Country they acted as separate sovereignties, and carried on the war by a kind of treaty of alliance against the common enemy. Ever since the union was formed the difficulty of what is called the "State Rights" has existed, and this had much to do in bringing on the present unhappy war in the United States. They commenced, in fact, at the wrong end. They declared by their Constitution that each state was a sovereignty in itself, and that all the powers incident to a sovereignty belonged to each state, except those powers which, by the Constitution, were conferred upon the General Government and Congress. Here we have adopted a different system. We have strengthened the General Government. We have given the General Legislature all the great subjects of legislation. We have conferred on them, not only specifically and in detail, all the powers which are incident to sovereignty, but we have expressly declared that all subjects of general interest not distinctly and exclusively conferred upon the local governments and local legislatures, shall be conferred upon the General Government and Legislature.—We have thus avoided that great source of weakness which has been the cause of the disruption of the United States. We have avoided all conflict of jurisdiction and authority, and if this Constitution is carried out, as it will be in full detail in the Imperial Act to be passed if the colonies adopt the scheme, we will have in fact, as I said before, all the advantages of a legislative union under one administration, with, at the same time, the guarantees for local institutions and for local laws, which are insisted upon by so many in the provinces now, I hope, to be united.

I think it is well that, in framing our Constitution—although my honourable friend the member for Hochelaga[1] sneered at it the other day, in the discussion on the Address in reply to the speech from the Throne—our first act should have been to recognize the sovereignty

[1] Mr. A. A. Dorion.

Digitized by Google

of Her Majesty. I believe that, while England has no desire to lose her colonies, but wishes to retain them, while I am satisfied that the public mind of England would deeply regret the loss of these provinces—yet, if the people of British North America after full deliberation had stated that they considered it was for their interest, for the advantage of the future of British North America to sever the tie, such is the generosity of the people of England, that, whatever their desire to keep these colonies, they would not seek to compel us to remain unwilling subjects of the British Crown. If therefore, at the Conference, we had arrived at the conclusion, that it was for the interest of these provinces that a severance should take place, I am sure that Her Majesty and the Imperial Parliament would have sanctioned that severance. We accordingly felt that there was a propriety in giving a distinct declaration of opinion on that point, and that, in framing the Constitution, its first sentence should declare, that "The Executive authority or government shall be vested in the Sovereign of the United Kingdom of Great Britain and Ireland, and be administered according to the well understood principles of the British Constitution, by the Sovereign personally, or by the Representative of the Sovereign duly authorized." That resolution met with the unanimous assent of the Conference. The desire to remain connected with Great Britain and to retain our allegiance to Her Majesty was unanimous. Not a single suggestion was made, that it could, by any possibility, be for the interest of the colonies, or of any section or portion of them, that there should be a severance of our connection. Although we knew it to be possible that Canada, from her position, might be exposed to all the horrors of war, by reason of causes of hostility arising between Great Britain and the United States—causes over which we had no control, and which we had no hand in bringing about—yet there was a unanimous feeling of willingness to run all the hazards of war, if war must come, rather than lose the connection between the Mother Country and these colonies. We provide that "the Executive authority shall be administered by the Sovereign personally, or by the Representative of the Sovereign duly authorized." It is too much to expect that the Queen should vouchsafe us her personal governance or presence, except to pay us, as the heir apparent

Digitized by Google

of the Throne, our future Sovereign has already paid us, the graceful compliment of a visit. The Executive authority must therefore be administered by Her Majesty's Representative. We place no restriction on Her Majesty's prerogative in the selection of her representative. As it is now, so it will be if this Constitution is adopted. The Sovereign has unrestricted freedom of choice. Whether in making her selection she may send us one of her own family, a Royal Prince, as a Viceroy to rule over us, or one of the great statesmen of England to represent her, we know not. We leave that to Her Majesty in all confidence. But we may be permitted to hope, that when the union takes place, and we become the great country which British North America is certain to be, it will be an object worthy the ambition of the statesmen of England to be charged with presiding over our destinies.

Let me now invite the attention of the House to the provisions in the Constitution respecting the legislative power. The sixth Resolution says, "There shall be a general legislature or parliament for the federated provinces, composed of a Legislative Council and a House of Commons." This resolution has been cavilled at in the English press as if it excluded the Sovereign as a portion of the Legislature. In one sense, that stricture was just —because in strict constitutional language, the Legislature of England consists of King, Lords and Commons. But, on the other hand, in ordinary parlance we speak of "the King and his Parliament," or "the King summoning his Parliament," the three estates—Lords spiritual, temporal Lords, and the House of Commons, and I observe that such a writer as Hallam occasionally uses the word Parliament in that restricted sense. At best it is merely a verbal criticism.[1] The legislature of British North America will be composed of King, Lords, and Commons. The Legislative Council will stand in the same relation to the Lower House, as the House of Lords to the House of Commons in England, having the same power of initiating all matters of legislation, except the granting of money. As regards the Lower House, it may not appear to matter much, whether it is called the House of Commons or House of Assembly. It will bear whatever name the Parliament of England may choose to give it, but "The House of

[1] This objection was met by Section 17 of the British North America Act.

Digitized by Google

Commons " is the name we should prefer, as showing that it represents the Commons of Canada, in the same way that the English House of Commons represents the Commons of England, with the same privileges, the same parliamentary usage, and the same parliamentary authority. In settling the constitution of the Lower House, that which peculiarly represents the people, it was agreed that the principle of representation based on population should be adopted, and the mode of applying that principle is fully developed in these resolutions. When I speak of representation by population, the House will of course understand, that universal suffrage is not in any way sanctioned, or admitted by these resolutions, as the basis on which the constitution of the popular branch should rest. In order to protect local interests, and to prevent sectional jealousies, it was found requisite that the three great divisions into which British North America is separated, should be represented in the Upper House on the principle of equality. There are three great sections, having different interests, in this proposed Confederation. We have Western Canada, an agricultural country far away from the sea, and having the largest population, who have agricultural interests principally to guard. We have Lower Canada, with other and separate interests, and especially with institutions and laws which she jealously guards against absorption by any larger, more numerous, or stronger power. And we have the Maritime Provinces, having also different sectional interests of their own, having, from their position, classes and interests which we do not know in Western Canada. Accordingly, in the Upper House—the controlling and regulating, but not the initiating, branch (for we know that here as in England, to the Lower House will practically belong the initiation of matters of great public interest), in the House which has the sober second-thought in legislation—it is provided that each of those great sections shall be represented equally by 24 members. The only exception to that condition of equality is in the case of Newfoundland, which has an interest of its own, lying, as it does, at the mouth of the great river St. Lawrence, and more connected, perhaps, with Canada than with the Lower Provinces. It has, comparatively speaking, no common interest with the other Maritime Provinces, but has sectional interests and sectional claims

Digitized by Google

of its own to be protected. It, therefore, has been dealt with separately, and is to have a separate representation in the Upper House, thus varying from the equality established between the other sections.

As may be well conceived, great difference of opinion at first existed as to the constitution of the Legislative Council. In Canada the elective principle prevailed; in the Lower Provinces, with the exception of Prince Edward Island, the nominative principle was the rule. We found a general disinclination on the part of the Lower Provinces to adopt the elective principle; indeed, I do not think there was a dissenting voice in the Conference against the adoption of the nominative principle, except from Prince Edward Island. The delegates from New Brunswick, Nova Scotia and Newfoundland, as one man, were in favour of nomination by the Crown. And nomination by the Crown is of course the system which is most in accordance with the British Constitution. We resolved then, that the constitution of the Upper House should be in accordance with the British system as nearly as circumstances would allow. An hereditary Upper House is impracticable in this young country. Here we have none of the elements for the formation of a landlord aristocracy—no men of large territorial positions—no class separated from the mass of the people. An hereditary body is altogether unsuited to our state of society, and would soon dwindle into nothing. The only mode of adapting the English system to the Upper House, is by conferring the power of appointment on the Crown (as the English peers are appointed), but that the appointments should be for life. The arguments for an elective Council are numerous and strong; and I ought to say so, as one of the Administration responsible for introducing the elective principle into Canada. I hold that this principle has not been a failure in Canada; but there were causes—which we did not take into consideration at the time—why it did not so fully succeed in Canada as we had expected. One great cause was the enormous extent of the constituencies and the immense labour which consequently devolved on those who sought the suffrages of the people for election to the Council. For the same reason the expense—the legitimate expense—was so enormous that men of standing in the country, eminently fitted for such a position, were prevented from

Digitized by Google

coming forward. At first, I admit, men of the first standing did come forward, but we have seen that in every succeeding election in both Canadas there has been an increasing disinclination, on the part of men of standing and political experience and weight in the country, to become candidates; while, on the other hand, all the young men, the active politicians, those who have resolved to embrace the life of a statesman, have sought entrance to the House of Assembly. The nominative system in this country was to a great extent successful, before the introduction of responsible government. Then the Canadas were to a great extent Crown colonies, and the upper branch of the legislature consisted of gentlemen chosen from among the chief judicial and ecclesiastical dignitaries, the heads of departments, and other men of the first position in the country. Those bodies commanded great respect from the character, standing, and weight of the individuals composing them, but they had little sympathy with the people or their representatives, and collisions with the Lower House frequently occurred, especially in Lower Canada. When responsible government was introduced, it became necessary for the Governor of the day to have a body of advisers who had the confidence of the House of Assembly, which could make or unmake ministers as it chose. The Lower House in effect pointed out who should be nominated to the Upper House; for the ministry, being dependent altogether on the lower branch of the legislature for support, selected members for the Upper House from among their political friends at the dictation of the House of Assembly. The Council was becoming less and less a substantial check on the legislation of the Assembly; but under the system now proposed, such will not be the case. No ministry can in future do what they have done in Canada before,—they cannot, with the view of carrying any measure, or of strengthening the party, attempt to overrule the independent opinion of the Upper House, by filling it with a number of its partisans and political supporters. The provision in the Constitution, that the Legislative Council shall consist of a limited number of members—that each of the great sections shall appoint twenty-four members and no more, will prevent the Upper House from being swamped from time to time by the ministry of the day, for the purpose of carrying out

Digitized by Google

their own schemes or pleasing their partisans. The fact of the government being prevented from exceeding a limited number will preserve the independence of the Upper House, and make it, in reality, a separate and distinct chamber, having a legitimate and controlling influence in the legislation of the country. The objection has been taken that in consequence of the Crown being deprived of the right of unlimited appointment, there is a chance of a dead-lock arising between the two branches of the legislature; a chance that the Upper House being altogether independent of the Sovereign, of the Lower House, and of the advisers of the Crown, may act independently, and so independently as to produce a dead-lock. I do not anticipate any such result. In the first place we know that in England it does not arise. There would be no use of an Upper House, if it did not exercise, when it thought proper, the right of opposing or amending or postponing the legislation of the Lower House. It would be of no value whatever were it a mere chamber for registering the decrees of the Lower House. It must be an independent House, having a free action of its own, for it is only valuable as being a regulating body, calmly considering the legislation initiated by the popular branch, and preventing any hasty or ill considered legislation which may come from that body, but it will never set itself in opposition against the deliberate and understood wishes of the people.[1] Even the House of Lords,

[1] Nothing is more remarkable in these debates than the contrast between the care with which the fathers of confederation discussed the composition of the Upper House, their fear that it might become too powerful, and its subsequent failure to become an efficient part in the machine of government. Brown was as much afraid of a dead-lock as was Macdonald. In the course of his speech he said: "It has been said that, though you may not give the power to the Executive to increase the numbers of the Upper House, in the event of a dead-lock, you might limit the term for which the members are appointed. I was myself in favour of that proposition. I thought it would be well to provide for a more frequent change in the composition of the Upper House, and lessen the danger of the chamber being largely composed of gentlemen whose advanced years might forbid the punctual and vigorous discharge of their public duties. Still, the objection made to this was very strong. It was said: 'Suppose you appoint them for nine years, what will be the effect? For the last three or four years of their term they would be anticipating its expiry, and anxiously looking to the Administration of the day for reappointment; and the consequence would be that a third of the members would be under the influence of the Executive.' The desire was to

Digitized by Google

which, as an hereditary body, is far more independent than one appointed for life can be, whenever it ascertains what is the calm, deliberate will of the people of England, yields, and never in modern times has there been, in fact or act, any attempt to overrule the decisions of that House by the appointment of new peers, excepting, perhaps, once in the reign of Queen Anne. It is true that in 1832 such an increase was threatened in consequence of the reiterated refusal of the House of Peers to pass the Reform Bill. I have no doubt the threat would have been carried into effect, if necessary; but every one, even the Ministry who advised that step, admitted that it would be a revolutionary act, a breach of the Constitution to do so, and it was because of the necessity of preventing the bloody revolution which hung over the land, if the Reform Bill had been longer refused to the people of England, that they consented to the bloodless revolution of overriding the independent opinion of the House of Lords on that question. Since that time it has never been attempted, and I am satisfied it will never be attempted again. Only a year or two ago the House of Lords rejected the Paper Duties Bill, and they acted quite constitutionally, according to the letter and, as many think, according to the spirit of the Constitution in doing so. Yet when they found they had interfered with a subject which the people's house claimed as belonging of right to themselves, the very next session they abandoned their position, not because they were convinced they had done wrong, but because they had ascertained what was the deliberate voice of the representatives of the people on the subject. In this country, we must remember, that the gentlemen who will be selected for the Legislative Council stand on a very different footing from the peers of England. They have not like them any ancestral associations or position derived from history. They have not that direct influence on the people themselves, or on the popular branch of the legislature, which the peers of England exercise, from their great wealth, their vast territorial possessions, their numerous tenantry, and that

---

render the Upper House a thoroughly independent body—one that would be in the best position possible to canvass dispassionately the interests of this House, and stand up for the public interests in opposition to hasty or partisan legislation."

Digitized by Google

prestige with which the exalted position of their class for centuries has invested them. The members of our Upper House will be like those of the Lower, men of the people, and from the people. The man put into the Upper House is as much a man of the people the day after, as the day before his elevation. Springing from the people, and one of them, he takes his seat in the Council with all the sympathies and feelings of a man of the people, and when he returns home, at the end of the session, he mingles with them on equal terms, and is influenced by the same feelings and associations and events as those which affect the mass around him. And is it, then, to be supposed that the members of the upper branch of the legislature will set themselves deliberately at work to oppose what they know to be the settled opinions and wishes of the people of the country? They will not do it. There is no fear of a dead-lock between the two houses. There is an infinitely greater chance of a dead-lock between the two branches of the legislature, should the elective principle be adopted, than with a nominated chamber—chosen by the Crown, and having no mission from the people. The members of the Upper Chamber would then come from the people as well as those of the Lower House, and should any difference ever arise between both branches, the former could say to the members of the popular branch: "We as much represent the feelings of the people as you do, and even more so; we are not elected from small localities and for a short period; you as a body were elected at a particular time, when the public mind was running in a particular channel; you were returned to Parliament, not so much representing the general views of the country, on general questions, as upon the particular subjects which happened to engage the minds of the people when they went to the polls. We have as much right, or a better right, than you to be considered as representing the deliberate will of the people on general questions, and therefore we will not give way." There is, I repeat, a greater danger of an irreconcilable difference of opinion between the two branches of the legislature, if the upper be elective, than if it holds its commission from the Crown. Besides, it must be remembered that an Upper House, the members of which are to be appointed for life, would not have the same quality of permanence as the House of Lords; our

Digitized by Google

members would die; strangers would succeed them, whereas son succeeded father in the House of Lords. Thus the changes in the membership and state of opinion in our Upper House would always be more rapid than in the House of Lords. To show how speedily changes have occurred in the Upper House, as regards life members, I will call the attention of the House to the following facts:—At the call of the House, in February, 1856, forty-two life members responded; two years afterwards, in 1858, only thirty-five answered to their names; in 1862 there were only twenty-five life members left, and in 1864, but twenty-one. This shows how speedily changes take place in the life membership. But remarkable as this change has been, it is not so great as that in regard to the elected members. Though the elective principle only came into force in 1856, and although only twelve men were elected that year, and twelve more every two years since, twenty-four changes have already taken place by the decease of members, by the acceptance of office, and by resignation. So it is quite clear that, should there be on any question a difference of opinion between the Upper and Lower Houses, the government of the day being obliged to have the confidence of the majority in the popular branch — would, for the purpose of bringing the former into accord and sympathy with the latter, fill up any vacancies that might occur, with men of the same political feelings and sympathies with the Government, and consequently with those of the majority in the popular branch; and all the appointments of the Administration would be made with the object of maintaining the sympathy and harmony between the two houses. There is this additional advantage to be expected from the limitation. To the Upper House is to be confided the protection of sectional interests; therefore is it that the three great divisions are there equally represented, for the purpose of defending such interests against the combinations of majorities in the Assembly. It will, therefore, become the interest of each section to be represented by its very best men, and the members of the Administration who belong to each section will see that such men are chosen, in case of a vacancy in their section. For the same reason each state of the American Union sends its two best men to represent its

Digitized by Google

interests in the Senate. It is provided in the Constitution that in the first selections for the Council, regard shall be had to those who now hold similar positions in the different colonies.[1] This, it appears to me, is a wise provision. In all the provinces, except Prince Edward Island, there are gentlemen who hold commissions for the Upper House for life. In Canada, there are a number who hold under that commission; but the majority of them hold by a commission, not, perhaps, from a monarchical point of view so honourable, because the Queen is the fountain of honour,—but still, as holding their appointment from the people, they may be considered as standing on a par with those who have Her Majesty's commission. There can be no reason suggested why those who have had experience in legislation, whether they hold their positions by the election of the people or have received preferment from the Crown—there is no valid reason why those men should be passed over, and new men sought for to form the Legislative Council of the Confederation. It is, therefore, provided that the selection shall be made from those gentlemen who are now members of the upper branch of the Legislature in each of the colonies, for seats in the Legislative Council of the General Legislature. The arrangement in this respect is somewhat similar to that by which Representative Peers are chosen from the Peers of Scotland and Ireland, to sit in the Parliament of the United Kingdom. In like manner, the members of the Legislative Council of the proposed Confederation will be first selected from the existing Legislative Councils of the various provinces.

In the formation of the House of Commons, the principle of representation by population has been provided for in a manner equally ingenious and simple. The introduction of this principle presented at first the apparent difficulty of a constantly increasing body until, with the increasing population, it would become inconveniently and expensively large. But by adopting the representation of Lower Canada as a fixed standard —as the pivot on which the whole would turn—that province being the best suited for the purpose, on account of the comparatively permanent character of its popula-

[1] This provision was omitted in the British North America Act, but its intention was followed in the selection of the original seventy-two Senators.

Digitized by Google

tion, and from its having neither the largest nor least number of inhabitants—we have been enabled to overcome the difficulty I have mentioned. We have introduced the system of representation by population without the danger of an inconvenient increase in the number of representatives on the recurrence of each decennial period. The whole thing is worked by a simple rule of three. For instance, we have in Upper Canada 1,400,000 of a population; in Lower Canada 1,100,000. Now, the proposition is simply this—if Lower Canada, with its population of 1,100,000, has a right to 65 members, how many members should Upper Canada have, with its larger population of 1,400,000? The same rule applies to the other provinces—the proportion is always observed and the principle of representation by population carried out, while, at the same time, there will not be decennially an inconvenient increase in the numbers of the Lower House. At the same time, there is a constitutional provision that hereafter, if deemed advisable, the total number of representatives may be increased from one hundred and ninety-four, the number fixed in the first instance. In that case, if an increase is made, Lower Canada is still to remain the pivot on which the whole calculation will turn. If Lower Canada, instead of sixty-five, shall have seventy members, then the calculation will be, if Lower Canada has seventy members, with such a population, how many shall Upper Canada have with a larger population? I was in favour of a larger House than one hundred and ninety-four, but was overruled. I was perhaps singular in the opinion, but I thought it would be well to commence with a larger representation in the lower branch. The arguments against this were, that, in the first place, it would cause additional expense; in the next place, that in a new country like this, we could not get a sufficient number of qualified men to be representatives. My reply was that the number is rapidly increasing as we increase in education and wealth; that a larger field would be open to political ambition by having a larger body of representatives; that by having numerous and smaller constituencies, more people would be interested in the working of the union, and that there would be a wider field for selection for leaders of governments and leaders of parties. These are my individual sentiments—which, perhaps, I have no right to express here—but I was over-

Digitized by Google

ruled, and we fixed on the number of one hundred and ninety-four, which no one will say is large or extensive, when it is considered that our present number in Canada alone is one hundred and thirty. The difference between one hundred and thirty and one hundred and ninety-four is not great, considering the large increase that will be made to our population when Confederation is carried into effect.

While the principle of representation by population is adopted with respect to the popular branch of the legislature, not a single member of the Conference, as I stated before, not a single one of the representatives of the government or of the opposition of any one of the Lower Provinces was in favour of universal suffrage. Every one felt that in this respect the principle of the British Constitution should be carried out, and that classes and property should be represented as well as numbers. Insuperable difficulties would have presented themselves if we had attempted to settle now the qualification for the elective franchise. We have different laws in each of the colonies fixing the qualification of electors for their own local legislatures ; and we therefore adopted a similar clause to that which is contained in the Canada Union Act of 1841, viz., that all the laws which affected the qualification of members and of voters, which affected the appointment and conduct of returning officers and the proceedings at elections, as well as the trial of controverted elections in the separate provinces, should obtain in the first election to the Confederate Parliament, so that every man who has now a vote in his own province should continue to have a vote in choosing a representative to the first Federal Parliament. And it was left to the Parliament of the Confederation, as one of their first duties, to consider and to settle by an act of their own the qualification for the elective franchise, which would apply to the whole Confederation. In considering the question of the duration of Parliament, we came to the conclusion to recommend a period of five years. I was in favour of a longer period. I thought that the duration of the local legislatures should not be shortened so as to be less than four years, as at present, and that the General Parliament should have as long a duration as that of the United Kingdom. I was willing to have gone to the extent of seven years ; but

Digitized by Google

a term of five years was preferred, and we had the example of New Zealand, a precedent which was carefully considered, not only locally, but by the Imperial Parliament, and which gave the provinces of those islands a general parliament with a duration of five years. But it was a matter of little importance whether five years or seven years was the term, the power of dissolution by the Crown having been reserved. I find, on looking at the duration of parliaments since the accession of George III. to the Throne, that excluding the present parliament, there have been seventeen parliaments, the average period of whose existence has been about three years and a half. That average is less than the average duration of the parliaments of Canada since the union, so that it was not a matter of much importance whether we fixed upon five or seven years as the period of duration of our General Parliament.

A good deal of misapprehension has arisen from the accidental omission of some words from the 24th resolution. It was thought that by it the local legislatures were to have the power of arranging hereafter, and from time to time of readjusting, the different constituencies and settling the size and boundaries of the various electoral districts. The meaning of the resolution is simply this, that for the first General Parliament, the arrangement of constituencies shall be made by the existing local legislatures; that in Canada, for instance, the present Canadian Parliament shall arrange what are to be the constituencies of Upper Canada, and to make such changes as may be necessary in arranging for the seventeen additional members given to it by the Constitution; and that it may also, if it sees fit, alter the boundaries of the existing constituencies of Lower Canada. In short, this Parliament shall settle what shall be the different constituencies electing members to the first Federal Parliament. And so the other provinces, the legislatures of which will fix the limits of their several constituencies in the session in which they adopt the new Constitution. Afterwards the local legislatures may alter their own electoral limits as they please, for their own local elections. But it would evidently be unproper to leave to the Local Legislature the power to alter the constituencies sending members to the General Legislature after the General Legislature shall have been called into

Digitized by Google

existence. Were this the case, a member of the General Legislature might at any time find himself ousted from his seat by an alteration of his constituency by the Local Legislature in his section. No; after the General Parliament meets, in order that it may have full control of its own legislation, and be assured of its position, it must have the full power of arranging and re-arranging the electoral limits of its constituencies as it pleases, such being one of the powers essentially necessary to such a Legislature.

I shall not detain the House by entering into a consideration at any length of the different powers conferred upon the General Parliament as contradistinguished from those reserved to the local legislatures; but any honourable member on examining the list of different subjects which are to be assigned to the General and Local Legislatures respectively, will see that all the great questions which affect the general interests of the Confederacy as a whole, are confided to the Federal Parliament, while the local interests and local laws of each section are preserved intact, and entrusted to the care of the local bodies. As a matter of course, the General Parliament must have the power of dealing with the public debt and property of the Confederation. Of course, too, it must have the regulation of trade and commerce, of customs and excise. The Federal Parliament must have the sovereign power of raising money from such sources and by such means as the representatives of the people will allow. It will be seen that the local legislatures have the control of all local works; and it is a matter of great importance, and one of the chief advantages of the Federal Union and of local legislatures, that each province will have the power and means of developing its own resources and aiding its own progress after its own fashion and in its own way. Therefore all the local improvements, all local enterprises or undertakings of any kind, have been left to the care and management of the local legislatures of each province. It is provided that all "lines of steam or other ships, railways, canals and other works, connecting any two or more of the provinces together or extending beyond the limits of any province," shall belong to the General Government, and be under the control of the General Legislature. In like manner "lines of steamships be-

Digitized by Google

tween the Federated Provinces and other countries, telegraph communication and the incorporation of telegraph companies, and all such works as shall, although lying within any province, be specially declared by the Acts authorizing them, to be for the general advantage," shall belong to the General Government. For instance, the Welland Canal, though lying wholly within one section, and the St. Lawrence Canals in two only, may be properly considered national works, and for the general benefit of the whole Federation. Again, the census, the ascertaining of our numbers and the extent of our resources, must, as a matter of general interest, belong to the General Government. So also with the defences of the country. One of the great advantages of Confederation is, that we shall have a united, a concerted, and uniform system of defence. We are at this moment with a different militia system in each colony—in some of the colonies with an utter want of any system of defence. We have a number of separate staff establishments, without any arrangement between the colonies as to the means, either of defence or offence. But, under the union, we will have one system of defence and one system of militia organization. In the event of the Lower Provinces being threatened, we can send the large militia forces of Upper Canada to their rescue. Should we have to fight on our lakes against a foreign foe, we will have the hardy seamen of the Lower Provinces coming to our assistance and manning our vessels. We will have one system of defence and be one people, acting together alike in peace and in war. The criminal law too—the determination of what is a crime and what is not and how crime shall be punished—is left to the General Government. This is a matter almost of necessity. It is of great importance that we should have the same criminal law throughout these provinces—that what is a crime in one part of British America, should be a crime in every part—that there should be the same protection of life and property as in another. It is one of the defects in the United States system, that each separate state has or may have a criminal code of its own,—that what may be a capital offence in one state, may be a venial offence, punishable slightly, in another. But under our Constitution we shall have one body of criminal law, based on the criminal law of England, and operating equally

Digitized by Google

throughout British America, so that a British American belonging to what province he may, or going to any other part of the Confederation, knows what his rights are in that respect, and what his punishment will be if an offender against the criminal laws of the land. I think this is one of the most marked instances in which we take advantage of the experience derived from our observations of the defects in the Constitution of the neighbouring Republic. The 33rd provision is of very great importance to the future well-being of these colonies. It commits to the General Parliament the "rendering uniform all or any of the laws relative to property and civil rights in Upper Canada, Nova Scotia, New Brunswick, Newfoundland and Prince Edward Island, and rendering uniform the procedure of all or any of the courts in these provinces."[1] The great principles which govern the laws of all the provinces, with the single exception of Lower Canada, are the same, although there may be a divergence in details; and it is gratifying to find, on the part of the Lower Provinces, a general desire to join together with Upper Canada in this matter, and to procure, as soon as possible, an assimilation of the statutory laws and the procedure in the courts, of all these provinces. At present there is a good deal of diversity. In one of the colonies, for instance, they have no municipal system at all. In another, the municipal system is merely permissive, and has not been adopted to any extent.[2] Although, therefore, a legislative union was found to be almost impracticable, it was understood, so far as we could influence the future, that the first act of the Confederate Government should be to procure an assimilation of the statutory law of all those provinces, which has, as its root and foundation, the common law of England. But to prevent local interests from being over-ridden, the same section makes provision, that, while power is given to the General Legislature to deal with this subject, no change in this respect should have the force and

[1] The Criminal Laws of the four original provinces were assimilated in 1869. The Criminal Code of the Dominion was consolidated in 1892, mainly by the work of Sir John Thompson. The Civil Laws of the various provinces differ somewhat from each other, but there is now a Bar Association of the Dominion, which is endeavouring to assimilate them in certain matters.

[2] Save in Upper and Lower Canada, there was at this time no real municipal system in any of the British North American Colonies.

Digitized by Google

authority of law in any province until sanctioned by the Legislature of that province. The General Legislature is to have power to establish a general Court of Appeal for the Federated Provinces. Although the Canadian Legislature has always had the power to establish a Court of Appeal, to which appeals may be made from the courts of Upper and Lower Canada, we have never availed ourselves of the power. Upper Canada has its own Court of Appeal, so has Lower Canada. And this system will continue until a General Court of Appeal shall be established by the General Legislature. The Constitution does not provide that such a court shall be established. There are many arguments for and against the establishment of such a court. But it was thought wise and expedient to put into the Constitution a power to the General Legislature, that, if after full consideration they think it advisable to establish a General Court of Appeal from all the Superior Courts of all the provinces, they may do so.[1] I shall not go over the other powers that are conferred on the General Parliament. Most of them refer to matters of financial and commercial interest, and I leave those subjects in other and better hands. Besides all the powers that are specifically given, the 37th and last item of this portion of the Constitution confers on the General Legislature the general mass of sovereign legislation, the power to legislate on "all matters of a general character, not specially and exclusively reserved for the local governments and legislatures." This is precisely the provision which is wanting in the Constitution of the United States. It is here that we find the weakness of the American system—the point where the American Constitution breaks down. It is in itself a wise and necessary provision. We thereby strengthen the Central Parliament, and make the Confederation one people and one government, instead of five peoples and five governments, with merely a point of authority connecting us to a limited and insufficient extent.

With respect to the local governments, it is provided that each shall be governed by a chief executive officer, who shall be nominated by the General Government. As this is to be one united province, with the local governments and legislatures subordinate to the General

[1] Such a Supreme Court was established in 1875, but appeal may be made from it to the Judicial Committee of the Privy Council.

Digitized by Google

Government and Legislature, it is obvious that the chief executive officer in each of the provinces must be subordinate as well. The General Government assumes towards the local governments precisely the same position as the Imperial Government holds with respect to each of the colonies now; so that as the Lieutenant-Governor of each of the different provinces is now appointed directly by the Queen, and is directly responsible, and reports directly to Her, so will the executives of the local governments hereafter be subordinate to the Representative of the Queen, and be responsible and report to him.[1] Objection has been taken that there is an infringement of the Royal prerogative in giving the pardoning power to the local governors, who are not appointed directly by the Crown, but only indirectly by the Chief Executive of the Confederation, who is appointed by the Crown. This provision was inserted in the Constitution on account of the practical difficulty which must arise if the power is confined to the Governor-General. For example, if a question arose about the discharge of a prisoner convicted of a minor offence, say in Newfoundland, who might be in imminent danger of losing his life if he remained in confinement, the exercise of the pardoning power might come too late if it were necessary to wait for the action of the Governor-General. It must be remembered that the pardoning power not only extends to capital cases, but to every case of conviction and sentence, no matter how trifling—even to the case of a fine in the nature of a sentence on a criminal conviction. It extends to innumerable cases, where, if the responsibility for its exercise were thrown on the General Executive, it could not be so satisfactorily discharged. Of course there must be, in each province, a legal adviser of the Executive, occupying the position of our Attorney-General, as there is in every state of the American Union. This officer will be an officer of the Local Government; but, if the pardoning power is reserved for the Chief Executive, there must, in every case where the exercise of the pardoning power is sought, be

[1] From 1867 to 1896 the tendency of the Conservatives was to minimize the powers of the Provincial Legislatures, that of the Liberals to uphold "Provincial Rights." The decisions of the Judicial Committee of the Privy Council tended to strengthen the authority of the provinces. See C. R. W. Biggar, *Sir Oliver Mowat* (2 vols., 1905).

Digitized by Google

a direct communication and report from the local law officer to the Governor-General. The practical inconvenience of this was felt to be so great, that it was thought well to propose the arrangement we did, without any desire to infringe upon the prerogatives of the Crown, for our whole action shows that the Conference, in every step they took, were actuated by a desire to guard jealously these prerogatives. It is a subject, however, of Imperial interest, and if the Imperial Government and Imperial Parliament are not convinced by the arguments we will be able to press upon them for the continuation of that clause, then, of course, as the overruling power, they may set it aside.[1]

There are numerous subjects which belong, of right, both to the Local and the General Parliaments. In all these cases it is provided, in order to prevent a conflict of authority, that where there is concurrent jurisdiction in the General and the Local Parliaments, the same rule should apply as now applies in cases where there is concurrent jurisdiction in the Imperial and in the Provincial Parliaments, and that when the legislation of the one is adverse to or contradictory of the legislation of the other, in all such cases the action of the General Parliament must overrule, *ex necessitate*, the action of the Local Legislature. We have introduced also all those provisions which are necessary in order to the full working out of the British Constitution in these provinces. We provide that there shall be no money votes, unless those votes are introduced in the popular branch of the Legislature on the authority of the responsible advisers of the Crown—those with whom the responsibility rests of equalizing revenue and expenditure—that there can be no expenditure or authorization of expenditure by Address or in any other way unless initiated by the Crown on the advice of its responsible advisers. . . .

[1] This provision was objected to by the Colonial Secretary. Writing to the Hon. Oliver Mowat, on August 28, 1873, Macdonald said: "You will remember that I was always strongly in favour of the pardoning power being entrusted to the Lieutenant-Governors of the different provinces. This was a provision in the Quebec resolutions; but Mr. Cardwell, then Colonial Secretary, objected to it; and in 1866-1867, when we were settling the B. N. A. Act, Lord Carnarvon, his successor, took the same position. We argued with him very strongly, and I thought we had the best of the argument; but we found it of no avail, as he declined positively to surrender the royal prerogative."—Pope, *Sir John Macdonald*, i. 275.

Digitized by Google

The last resolution of any importance is one which, although not affecting the substance of the Constitution, is of interest to us all. It is that "Her Majesty the Queen be solicited to determine the rank and name of the federated provinces." I do not know whether there will be any expression of opinion in this House on this subject—whether we are to be a vice-royalty, or whether we are still to retain our name and rank as a province. But I have no doubt Her Majesty will give the matter Her gracious consideration, that She will give us a name satisfactory to us all, and that the rank She will confer upon us will be a rank worthy of our position, of our resources, and of our future.[1] Let me again, before I sit down, impress upon this House the necessity of meeting this question in a spirit of compromise, with a disposition to judge the matter as a whole, to consider whether really it is for the benefit and advantage of the country to form a Confederation of all the provinces; and if honourable gentlemen, whatever may have been their preconceived ideas as to the merits of the details of this measure, whatever may still be their opinions as to these details, if they really believe that the scheme is one by which the prosperity of the country will be increased, and its future progress secured, I ask them to yield their own views, and to deal with the scheme according to its merits as one great whole.[2] One argument, but not a strong one, has been used against this Confederation, that it is an advance towards independence. Some are apprehensive that the very fact of our forming this union will hasten the time when we shall be severed from the mother country. I have no apprehension of that kind. I believe it will have the contrary

[1] See p. 147, note 2.

[2] Brown also insisted very strongly on this point. There was little popular enthusiasm for the measure, and its framers dreaded the result of an appeal to the country. Thus, writing on October 8, 1866, to Mr. (afterwards Sir) Leonard Tilley, Macdonald says: "It appears to us to be important that the Bill should not be finally settled until just before the meeting of the British Parliament. The measure must be carried *per saltum*, and no echo of it must reverberate through the British provinces till it becomes law. If the delegation had been complete in England, and they had prepared the measure in August last, it would have been impossible to keep its provisions secret until next January. There will be few important clauses in the measure that will not offend some interest or individual, and its publication would excite a new and fierce agitation on this side of the Atlantic."

Digitized by Google

effect. I believe that as we grow stronger, that as it is felt in England we have become a people, able from our union, our strength, our population, and the development of our resources, to take our position among the nations of the world, she will be less willing to part with us than she would be now, when we are broken up into a number of insignificant colonies, subject to attack piecemeal without any concerted action or common organization of defence. I am strongly of opinion that year by year, as we grow in population and strength, England will more and more see the advantages of maintaining the alliance between British North America and herself. Does any one imagine that, when our population, instead of three and a half, will be seven millions, as it will be ere many years pass, we would be one whit more willing than now to sever the connection with England? Would not those seven millions be just as anxious to maintain their allegiance to the Queen and their connection with the Mother Country, as we are now? Will the addition to our numbers of the people of the Lower Provinces in any way lessen our desire to continue our connection with the Mother Country? I believe the people of Canada East and West to be truly loyal. But, if they can by possibility be exceeded in loyalty, it is by the inhabitants of the Maritime Provinces. Loyalty with them is an overruling passion. In all parts of the Lower Provinces there is a rivalry between the opposing political parties as to which shall most strongly express and most effectively carry out the principle of loyalty to Her Majesty, and to the British Crown. When this union takes place, we will be at the outset no inconsiderable people. We find ourselves with a population approaching four millions of souls. Such a population in Europe would make a second, or at least, a third rate power. And with a rapidly increasing population—for I am satisfied that under this union our population will increase in a still greater ratio than ever before—with increased credit—with a higher position in the eyes of Europe—with the increased security we can offer to immigrants, who would naturally prefer to seek a new home in what is known to them as a great country, than in any one little colony or another—with all this I am satisfied that, great as has been our increase in the last twenty-five years since the union between Upper and Lower Canada,

Digitized by Google

our future progress, during the next quarter of a century, will be vastly greater. And when, by means of this rapid increase, we become a nation of eight or nine millions of inhabitants, our alliance will be worthy of being sought by the great nations of the earth. I am proud to believe that our desire for a permanent alliance will be reciprocated in England. I know that there is a party in England—but it is inconsiderable in numbers, though strong in intellect and power—which speaks of the desirability of getting rid of the colonies; but I believe such is not the feeling of the statesmen and the people of England. I believe it will never be the deliberately expressed determination of the Government of Great Britain. The colonies are now in a transition state. Gradually a different colonial system is being developed—and it will become, year by year, less a case of dependence on our part, and of overruling protection on the part of the Mother Country, and more a case of a healthy and cordial alliance. Instead of looking upon us as a merely dependent colony, England will have in us a friendly nation—a subordinate but still a powerful people—to stand by her in North America in peace or in war. The people of Australia will be such another subordinate nation. And England will have this advantage, if her colonies progress under the new colonial system, as I believe they will, that, though at war with all the rest of the world, she will be able to look to the subordinate nations in alliance with her, and owning allegiance to the same Sovereign, who will assist in enabling her again to meet the whole world in arms, as she has done before. And if, in the great Napoleonic war, with every port in Europe closed against her commerce, she was yet able to hold her own, how much more will that be the case when she has a colonial empire rapidly increasing in power, in wealth, in influence, and in position? It is true that we stand in danger, as we have stood in danger again and again in Canada, of being plunged into war and suffering all its dreadful consequences, as the result of causes over which we have no control, by reason of this connection. This, however, did not intimidate us. At the very mention of the prospect of a war some time ago, how were the feelings of the people aroused from one extremity of British America to the other, and preparations made for

Digitized by Google

meeting its worst consequences. Although the people of this country are fully aware of the horrors of war—should a war arise, unfortunately, between the United States and England, and we all pray it never may—they are still ready to encounter all perils of that kind, for the sake of the connection with England. There is not one adverse voice, not one adverse opinion on that point. We all feel the advantages we derive from our connection with England. So long as that alliance is maintained, we enjoy, under her protection, the privileges of constitutional liberty according to the British system. We will enjoy here that which is the great test of constitutional freedom—we will have the rights of the minority respected. In all countries the rights of the majority take care of themselves, but it is only in countries like England, enjoying constitutional liberty, and safe from the tyranny of a single despot or of an unbridled democracy, that the rights of minorities are regarded. So long, too, as we form a portion of the British Empire, we shall have the example of her free institutions, of the high standard of the character of her statesmen and public men, of the purity of her legislation, and the upright administration of her laws. In this younger country one great advantage of our connection with Great Britain will be, that, under her auspices, inspired by her example, a portion of her empire, our public men will be actuated by principles similar to those which actuate the statesmen at home. These, although not material, physical benefits, of which you can make an arithmetical calculation, are of such overwhelming advantage to our future interests and standing as a nation, that to obtain them is well worthy of any sacrifices we may be called upon to make, and the people of this country are ready to make them. We should feel, also, sincerely grateful to beneficent Providence that we have had the opportunity vouchsafed us of calmly considering this great constitutional change, this peaceful revolution—that we have not been hurried into it, like the United States, by the exigencies of war—that we have not had a violent revolutionary period forced on us, as in other nations, by hostile action from without, or by domestic dissensions within. Here we are in peace and prosperity, under the fostering government of Great Britain—a dependent people, with a government having only a limited and

Digitized by Google

delegated authority, and yet allowed, without restriction, and without jealousy on the part of the Mother Country, to legislate for ourselves, and peacefully and deliberately to consider and determine the future of Canada and of British North America. It is our happiness to know the expression of the will of our Gracious Sovereign, through Her Ministers, that we have her full sanction for our deliberations, that Her only solicitude is that we shall adopt a system which shall be really for our advantage, and that She promises to sanction whatever conclusion after full deliberation we may arrive at as to the best mode of securing the well-being—the present and future prosperity of British America. It is our privilege and happiness to be in such a position, and we cannot be too grateful for the blessings thus conferred upon us. I must apologise for having detained you so long—for having gone perhaps too much into tedious details with reference to the questions bearing on the Constitution now submitted to this House. In conclusion, I would again implore the House not to let this opportunity pass. It is an opportunity that may never recur. At the risk of repeating myself, I would say, it was only by a happy concurrence of circumstances, that we were enabled to bring this great question to its present position. If we do not take advantage of the time, if we show ourselves unequal to the occasion, it may never return, and we shall hereafter bitterly and unavailingly regret having failed to embrace the happy opportunity now offered of founding a great nation under the fostering care of Great Britain, and our Sovereign Lady, Queen Victoria.

Attorney-General Cartier[1]: Confederation was, as it were, at this moment almost forced upon us. We could not shut our eyes to what was going on beyond the lines, where a great struggle was going on between two Confederacies, at one time forming but one Confederacy. We saw that a government, established not more than eighty years ago, had not been able to keep together the family of states which had broke up four or five years since. We could not deny that the struggle now in pro-

[1] The only speech which we have given in full is that of Macdonald, but it must be remembered that in the earlier stages of the movement Cartier, Brown, and Galt were at least equally important.

Digitized by Google

gress must necessarily influence our political existence. We did not know what would be the result of that great war—whether it would end in the establishment of two Confederacies or in one as before. However, we had to do with five colonies, inhabited by men of the same sympathies and interests, and in order to become a great nation they required only to be brought together under one General Government. The matter resolved itself into this, either we must obtain British North American Confederation or be absorbed in an American Confederation. Some entertained the opinion that it was unnecessary to have British North American Confederation to prevent absorption into the vortex of American Confederation. Such parties were mistaken. We knew the policy of England towards us—that she was determined to help and support us in any struggle with our neighbours. The British Provinces, separated as at present, could not defend themselves alone, and the question resolved itself into this : shall the whole strength of the empire be concentrated into Prince Edward Island or Canada, as the case may be, in case of a war with the United States—or shall the provinces be left to fight single-handed, disunited ? We were not sufficiently united. We had our duties, with regard to England, to perform. In order to secure the exercise of her power in our defence we must help her ourselves. We could not do this satisfactorily or efficiently unless we had a Confederation. When all united, the enemy would know that, if he attacked any part of those provinces —Prince Edward Island or Canada—he would have to encounter the combined strength of the empire. Canada, separate, would be, although comparatively strong in population and wealth, in a dangerous position should a war ensue. When we had organized our good defensive force, and united for mutual protection, England would send freely here both men and treasure for our defence. He had stated before audiences in the Lower Provinces that, as far as territory, population and wealth were concerned, Canada was stronger than any of the other provinces, but at the same time was wanting in one element necessary to national greatness—the maritime one ; and that, owing to the large trade and commerce of Canada, extensive communication with Great Britain at all seasons was absolutely necessary. Twenty years

Digitized by Google

ago our commerce for the year could be managed by communication with Great Britain in the summer months only. At present, however, this system was insufficient, and for winter communication with the sea-board we were left to the caprice of our American neighbours, through whose territory we must pass. He had also alluded to the bonding system, which if the Americans were to withdraw, Canada would be left in winter without any winter harbours. Canada, having two or three elements of national greatness—territory and population—wanted the maritime element; and as he had said, the Lower Provinces had this element and a sea-board, but not a back country or large population, which Canada possessed,—and for the mutual benefit and prosperity of all the provinces, all these elements ought to be united together. Those who pretended that the British North American Provinces would be in as safe a position, remaining separate, while they belonged to the British Crown, as under Confederation, were under a great misapprehension. Now was the time for us to form a great nation of the several provinces. Now was the time to look the matter in the face and adopt the only safe and prudent course open to us in the shape of Confederation. He maintained it was necessary for our own commercial interests, prosperity and efficient defence. That was what we had now to discuss, and not the manner in which Confederation was to be brought about, which would be discussed when the details of the scheme came up for consideration. At present the question was: Was Confederation of the British North American Provinces necessary in order to increase our strength and power and secure to us the continuance of the benefits of British connection? He had no doubt that the measure was necessary for those objects. It would be observed that the English speaking opponents of the scheme, in Lower Canada, pretended a fear of this element being absorbed by the French Canadian; while the opponents, composed of the latter origin—of men who might be called the old Papineau Tail—whose sole idea was annexation to the United States—said they were afraid of the extinction of French Canadian nationality in the great Confederation. The annexation party in Montreal, including the followers of Mr. John Dougall, the proprietor of the *Witness*, opposed the scheme on the

Digitized by Google

ground of supposed danger to the British of Lower Canada. The annexation party could not, however, be supposed to be sincere in their opposition to the scheme—except in so far as they desired to carry Canada into the American Union. The absorption of this province into the United States had long been contemplated, as would be seen from the 7th article in the original draft of the American Constitution, which he would read. It was as follows: "Art. 7. Canada, according to this Confederation and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this union; and shall be equally with any other of the United States, solemnly bound to a strict observance of, and obedience to, these articles; as shall be also any other colony which shall be admitted into this Confederacy. The eleven votes in Congress shall be increased in proportion as the Confederacy is extended. But, except Canada, no other colony shall be admitted into the Confederacy without the assent of eleven or more votes, as the case may require, by the Confederation being extended." By that article, no new state could go into the union except by the vote of the number of states required to admit a new partner. But, as regarded Canada, no such assent was required; on knocking at the door of the union, she would, as a matter of course, be admitted. The honourable gentleman went on to say that the papers lately contained a report of a meeting at the *Institut Canadien* of Montreal, where it was resolved that it was for the interests of Lower Canada—in the interests of the French Canadians, were the province to become a part of the American Union.

Hon. Mr. *Dorion* said that was not the case. The honourable gentleman had misquoted what had passed there.

Hon. Mr. *Cartier* said he was right. If resolutions were not passed, sentiments were expressed to that effect. Then the organ of the Institute—*L'Ordre*, he thought—had set forth that the interests of Lower Canada would be better secured by annexation to the United States than entering into a Confederation with the British American Provinces. It was no wonder, then, that the French Canadian annexationists betrayed their purpose in opposition to British North American Confederation, and that their English-speaking colleagues pretended a

Digitized by Google

fear of the rights of their class being jeopardized under Confederation. We knew their object in this—that they were aware that as soon as this project was adopted, there would be no avail in any cry of separation to form a part of the American Union. . . .

Some parties—through the press and by other modes—pretended that it was impossible to carry out Federation, on account of the differences of races and religions. Those who took this view of the question were in error. It was just the reverse. It was precisely on account of the variety of races, local interests, etc., that the Federation system ought to be resorted to, and would be found to work well. We were in the habit of seeing in some public journals, and hearing from some public men, that it was a great misfortune indeed there should be a difference of races in this colony—that there should be the distinction of French Canadian from British Canadian. Now, he desired on this point to vindicate the rights, the merits, the usefulness, so to speak, of those belonging to the French Canadian race. In order to bring these merits and this usefulness more prominently before his hearers, it would be only necessary to allude to the efforts made by them to sustain British power on this continent, and to point out their adherence to British supremacy in trying times. We were all conversant with the history of the circumstances which had brought about the difficulties between England and her former American colonies in 1775. Lower Canada,—or rather he should say, the Province of Quebec, for the colony was not then known by the name of Canada, but was called the Province of Quebec,—contained the most dense population of any British colony in North America at that time. The accession of Lower Canada was of course an object of envy to the other American colonies, and strenuous efforts were made by those who had resolved to overthrow British power on this continent to induce Canada to ally herself to their cause. As early as 1775, the French Canadians were solemnly addressed in a proclamation by General Washington, who called upon them to abandon the flag of their new masters, inasmuch as they could not expect anything from those who differed from them in language, in religion, in race, and in sympathies. But what was the conduct of the French Canadian people under these circumstances—

Digitized by Google

what was the attitude of the clergy and the seigniors? It was right in treating this chapter of our history, to render justice to whom justice was due, and it was truth to say that the seigniors, forming, as they did, the educated class of our population at that early epoch, had fully understood that the object and aim of those who appealed to them was the downfall of the monarchical system in America. A few years only had elapsed at that time since the transfer of the country and its population from the Crown of France to the Crown of Great Britain; but even within that brief interval of time, they were enabled to appreciate the advantages of their new position, notwithstanding the fact that they were still struggling and complaining. The people, as well as the clergy and aristocracy, had understood that it was better for them to remain under the English and Protestant Crown of England, rather than to become republicans. They were proof against the insidious offers of George Washington; and not only so, but when the Americans came as invaders, they fought against the armed forces of Arnold, Montgomery, and others. Attempts were made to excite hostility to Federation on the ground that, under the régime of a local legislature, the English Protestant minority would not be fairly dealt with. He thought the way in which the French Canadians had stood by British connection, when there were but few British in the province, was a proof that they would not attempt to deal unjustly now by the British minority, when their numbers were so much greater.[1] On this point, appealing to the evidence of history, he would quote from the work which he had already quoted. At a time when there were, perhaps, hardly a few hundred English Protestant

[1] The Premier, Sir E. P. Taché, and the Hon. T. D'Arcy McGee also spoke strongly against the possibility of French domination. McGee quoted with great effect a passage from the *Digest of the Synod Minutes of the Presbyterian Church of Canada:* "About the year 1790 the Presbyterians of Montreal of all denominations, both British and American, organized themselves into a Church, and in the following year secured the services of the Rev. John Young. At this time they met in the Recollet Roman Catholic Church, but in the year following they erected the edifice which is now known as the St. Gabriel Street Church—the oldest Protestant church in the province. In their early minutes we find them, in acknowledgment of the kindness of the Recollet Fathers, presenting them with 'one box of candles, 56 pounds, at 8d., and one hogshead of Spanish wine at £6 5s.'"

Digitized by Google

residents in Lower Canada, the address in the name of Washington, to which he had already briefly referred, was circulated throughout the country by Arnold's invading army. It made the most earnest appeals to the Lower Canadians to join the other colonies. . . . (The honourable gentleman here read a number of extracts from General Washington's proclamation, addressed to the inhabitants of Canada.) It appeared by this address that the most tempting offers and promises had been made by the republican general; but they had failed, nevertheless, to accomplish the desired effect. This, however, was not the only trait of this nature in the history of the French Canadian people. There was another despatch, or rather proclamation, issued in 1778, by Baron D'Estaing, commander of the French fleet, which was acting in aid of the American revolutionary party. (The honourable gentleman read some extracts from this proclamation.) . . . D'Estaing had appealed to their ancestry and their prejudices; he had invoked the names of Lévis and Montcalm, and endeavoured to influence their clergy; but the French Canadians understood their position too well. If they had their institutions, their language and their religion intact to-day, it was precisely because of their adherence to the British Crown. Had they yielded to the appeals of Washington and Baron D'Estaing, it is probable that there would not have been now a vestige of British power on this continent. But, with the disappearance of British power, they too would have disappeared as French Canadians. These historical facts taught that there should be a mutual feeling of gratitude from the French Canadians towards the British, and from the British towards the French Canadians, for our present position, that Canada is still a British colony. He had had occasion, a moment ago, to refer to the French Canadian clergy in connection with D'Estaing's address, and he would say this, to their honour and credit, that, if to-day Canada was a portion of the British Empire, it was due to the conservatism of the French Canadian clergy. It was a pleasure to him thus to be able to quote from these old documents proofs of the honour, loyalty, and liberality of the French Canadian people. He was as devoid of prejudice as any honourable gentleman in this House; but when he heard or read the statements occasionally made, that there was

Digitized by Google

some danger that, under the Federation system, the French Canadians would have too much power, and that the power thus obtained would be used to the prejudice of the British and Protestant minority — the history of the past, in many instances, was the best reply to such attacks. Baron D'Estaing issued his tempting proclamation in 1778, and it was sent into Canada frequently afterwards, and circulated at the instigation of Rochambeau and Lafayette; but our clergy and our aristocracy, the leaders of our people in these days, saw that it was not their interest to cast their lot with the democratic element — they knew the hollowness of democracy. We found ourselves at the present day discussing the question of the Federation of the British North American Provinces, while the great Federation of the United States of America was broken up and divided against itself. There was, however, this important difference to be observed in considering the action of the two peoples. They had founded Federation for the purpose of carrying out and perpetuating democracy on this continent; but we, who had the benefit of being able to contemplate republicanism in action during a period of eighty years, saw its defects, and felt convinced that purely democratic institutions could not be conducive to the peace and prosperity of nations. We were not now discussing the great problem presented to our consideration, in order to propagate democratic principles. Our attempt was for the purpose of forming a Federation with a view of perpetuating the monarchical element. The distinction, therefore, between ourselves and our neighbours was just this :—In our Federation the monarchical principle would form the leading feature, while on the other side of the lines, judging by the past history and present condition of the country, the ruling power was the will of the mob, the rule of the populace. Every person who had conversed with the most intelligent American statesmen and writers must have learned that they all admitted that the governmental powers had become too extended, owing to the introduction of universal suffrage, and mob rule had consequently supplanted legitimate authority; and we now saw the sad spectacle of a country torn by civil war, and brethren fighting against brethren. The question for us to ask ourselves was this : Shall we be

Digitized by Google

content to remain separate—shall we be content to maintain a mere provincial existence, when, by combining together, we could become a great nation? It had never yet been the good fortune of any group of communities to secure national greatness with such facility. In past ages, warriors had struggled for years for the addition to their country of a single province. We had, too, for instance, in our own days, the case of Napoleon III., who, after great expenditure of blood and treasure in the Italian difficulty, had acquired Savoy and Nice, by which he had obtained an addition of nearly one million inhabitants to France—only one million souls, and if any person were for a moment to make a calculation of the value of the provinces acquired on one side, and the great cost on the other, he would at once see the great disproportion between the one and the other, and so ascertain the fact that the territory acquired did not compensate the outlay.

Here, in British North America, we had five different communities inhabiting five separate colonies. We had the same sympathies, and we all desired to live under the British Crown. We had our commercial interests besides. It was of no use whatever that New Brunswick, Nova Scotia and Newfoundland should have their several custom houses against our trade, or that we should have custom houses against the trade of those provinces. In ancient times, the manner in which a nation grew up was different from that of the present day. Then the first weak settlement increased into a village, which, by turns, became a town and a city, and the nucleus of a nation. It was not so in modern times. Nations were now formed by the agglomeration of communities having kindred interests and sympathies. Such was our case at the present moment. Objection had been taken to the scheme now under consideration, because of the words "new nationality." Now, when we were united together, if union were attained, we would form a political nationality with which neither the national origin, nor the religion of any individual, would interfere. It was lamented by some that we had this diversity of races, and hopes were expressed that this distinctive feature would cease. The idea of unity of races was utopian—it was impossible. Distinctions of this kind would always exist. Dis-

Digitized by Google

similarity, in fact, appeared to be the order of the physical world and of the moral world, as well as in the political world. But with regard to the objection based on this fact, to the effect that a great nation could not be formed because Lower Canada was in great part French and Catholic, and Upper Canada was British and Protestant, and the Lower Provinces were mixed, it was futile and worthless in the extreme. Look, for instance, at the United Kingdom, inhabited as it was by three great races. Had the diversity of race impeded the glory, the progress, the wealth of England? Had they not rather each contributed their share to the greatness of the Empire? Of the glories of the senate, the field, and the ocean, of the successes of trade and commerce, how much was contributed by the combined talents, energy and courage of the three races together? In our own Federation we should have Catholic and Protestant, English, French, Irish and Scotch, and each by his efforts and his success would increase the prosperity and glory of the new Confederacy. He viewed the diversity of races in British North America in this way: we were of different races, not for the purpose of warring against each other, but in order to compete and emulate for the general welfare. We could not do away with the distinctions of race. We could not legislate for the disappearance of the French Canadians from American soil, but British and French Canadians alike could appreciate and understand their position relative to each other. They were placed like great families beside each other, and their contact produced a healthy spirit of emulation. It was a benefit rather than otherwise that we had a diversity of races. Of course, the difficulty, it would be said, would be to deal fairly by the minority. In Upper Canada the Catholics would find themselves in a minority; in Lower Canada the Protestants would be in a minority, while the Lower Provinces were divided. Under such circumstances, would any one pretend that either the local or general governments would sanction any injustice? What would be the consequence, even supposing any such thing were attempted by any one of the local governments? It would be censured everywhere. Whether it came from Upper Canada or from Lower Canada, any attempt to deprive the minority of their rights would be at once thwarted. Under the Federal

Digitized by Google

system, granting to the control of the General Government these large questions of general interest in which the differences of race or religion had no place, it could not be pretended that the rights of either race or religion could be invaded at all. We were to have a General Parliament to deal with the matters of defence, tariff, excise, public works, and these matters absorbed all individual interest. Now, he would ask those self-styled nationalists who accused him of bartering fifty-eight counties in Lower Canada to John Bull, and his honourable colleague beside him (Hon. Mr. Brown)—he would ask them, under what supposition could they think it possible for any injustice to be done to the French Canadians by the General Government ?

He came now to the subject of Local Governments. We could easily understand how a feeling against the Federation project was raised in the minds of a few of the British residents of Lower Canada by fears of such difficulties as those which occurred in the days of Mr. Papineau, relative to the passing of laws relating to commercial matters. These difficulties had been of a very inconvenient nature, Mr. Papineau not being a commercial man, and not understanding the importance of these measures. He considered Mr. Papineau was right in the struggle he maintained against the oligarchy at that time in power ; but he had never approved of the course he took with reference to commercial matters, and in opposition to measures for the improvement of the country. But this precedent could not be urged as an objection to Federation, inasmuch as it would be for the General Government to deal with our commercial matters. There could be no reason for well-grounded fear that the minority could be made to suffer by means of any laws affecting the rights of property. If any such enactments were passed, they would fall upon the whole community. But even supposing such a thing did occur, there was a remedy provided under the proposed Constitution. The magnitude of the scheme now submitted was, perhaps, the reason why those who had not made themselves conversant with the question felt some apprehension in contemplating it ; but, when we came to discuss it clause by clause, he would be ready to state that no interest would be harmed in any way if Federation took place. It was true that

Digitized by Google

opposition was being offered in Montreal, by Mr. John Dougall, of the *Witness*. And, while referring to the opponents of Federation, he could not help adverting to the strange manner in which extremes met and worked in unison to oppose Federation. For instance, we had the party who formerly composed what might be styled Mr. Papineau's Tail—the extreme democratic party—joined with Mr. Dougall's Tail. This scheme, he repeated, met with the approval of all moderate men. The extreme men, the socialists, democrats and annexationists were opposed to it. The French Canadian opponents of the project were, it appeared, afraid that their religious rights would suffer under the new arrangement. Fancy the celebrated *Institut Canadien*, of Montreal, under the lead of citizen Blanchet, taking religion under their protection! Mr. Dougall loudly proclaimed that the British Protestant minority would be entirely placed at the mercy of the French Canadians. He (Cartier) thought the arguments of the young French gentlemen belonging to the national democratic party who cried out that their religion and nationality would be destroyed, ought in all reason to be sufficient to satisfy the scruples and calm the fears of Mr. Dougall. The *True Witness*, which was also one of the enemies of the scheme, said that if it were adopted the French Canadians were doomed; while his brother in violence, the *Witness*, said that the Protestants were doomed. At a meeting recently held in Montreal on the subject, he observed that Mr. Cherrier had enrolled himself among the enemies of the project. Well, this fine, quiet, old gentleman announced that he had come out of his political retirement for the purpose of opposing Federation. All he could say was that he never knew Mr. Cherrier was a strong politician. However, it appeared that he had come out once more on the political stage for the purpose of opposing this villainous scheme, which was intended to destroy the nationality and religion of the French Canadians—all brought about by that confounded Cartier! Allusion had been made to the opinion of the clergy. Well, he would say that the opinion of the clergy was for Confederation. Those who were high in authority, as well as those who occupied more humble positions, were in favour of Federation, not only because they saw in it so much security for all they held dear, but because it was just to their Protestant fellow-subjects as well,

Digitized by Google

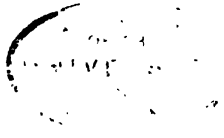
because they were opposed to political bickering and strife. This opposition to a state of political dissension and trouble was the general feeling of the clergy, and because they saw in Confederation a solution of those difficulties which had existed for some time, due regard being had to just rights, they were favourable to the project.—The fact, however, was that when we saw such extreme opponents as Mr. Clerk, of the *True Witness*, Mr. Dougall, of the *Witness*, and the young gentlemen of the *Institut Canadien* combined to resist Confederation, because each party argued it would produce the most widely different results—we might look upon this fact, he repeated, as one of the strongest arguments in favour of Confederation. We had, on the other hand, all the moderate men, all that was respectable and intelligent, including the clergy, favourable to Federation. He did not, of course, mean to say that there were not respectable opponents to the project—what he did mean, however, was that it met general approval from the classes referred to.

He was opposed, he might as well state most distinctly, to the democratic system which obtained in the United States. In this country of British North America we should have a distinct form of government, the characteristic of which would be to possess the monarchical element. When we had Confederation secured, there was not the least doubt but that our Government would be more respectable—that it would have more prestige, and command more respect from our neighbours. The great want under the American form—the point which they all admitted formed the great defect—was the absence of some respectable executive element. How was the head of the United States Government chosen? Candidates came forward, and of course each one was abused and villified as corrupt, ignorant, incapable and unworthy by the opposite party. One of them attained the presidential chair; but even while in that position he was not respected by those who had opposed his election, and who tried to make him appear the most corrupt and contemptible being in creation. Such a system could not produce an executive head who would command respect. Under the British system ministers might be abused and assailed; but that abuse never reached the Sovereign. Whether we were made a

Digitized by Google

kingdom or a viceroyalty—whatever name or grade was assigned to us—we would undoubtedly have additional prestige. He would now conclude his remarks by asking honourable gentlemen to consider well this scheme. It was his hope, his cherished hope, that it would be adopted by the House. The time was opportune, as his honourable colleague had so ably stated last evening; the opportunity might never offer itself again in such a facile and propitious manner. We knew we had, in all our proceedings, the approbation of the Imperial Government. So if these resolutions were adopted by Canada, as he had no doubt they would, and by the other Colonial Legislatures, the Imperial Government would be called upon to pass a measure which would have for its effect to give a strong central or general government and local governments, which would at once secure and guard the persons, the properties and the civil and religious rights belonging to the population of each section.

Hon. Mr. Galt: It is a matter for regret on the part of all of us that the trade between these colonies—subject all to the same Sovereign, connected with the same empire—has been so small. Intercolonial trade has been, indeed, of the most insignificant character; we have looked far more to our commercial relations with the neighbouring—though a foreign,—country, than to the interchange of our own products, which would have retained the benefits of our trade within ourselves; hostile tariffs have interfered with the free interchange of the products of the labour of all the colonies, and one of the greatest and most immediate benefits to be derived from their union will spring from the breaking down of these barriers and the opening up of the markets of all the provinces to the different industries of each. In this manner we may hope to supply Newfoundland and the great fishing districts of the Gulf, with the agricultural productions of Western Canada; we may hope to obtain from Nova Scotia our supply of coal; and the manufacturing industry of Lower Canada may hope to find more extensive outlets in supplying many of those articles which are now purchased in foreign markets. For instance, Newfoundland produces scarcely anything by agriculture, manufactures hardly an article of clothing, and a considerable trade may thus be expected to arise; while, instead of having payments made, as they



Digitized by Google

are now, through Lombard Street, they will be made through our own bankers in Montreal and elsewhere. If we require to find an example of the benefits of free commercial intercourse, we need not look beyond the effects that have followed from the working of the Reciprocity Treaty with the United States. In one short year from the time when that treaty came into operation, our trade in the natural productions of the two countries swelled from less than $2,000,000 to upwards of $20,000,000 per annum, and now, when we are threatened with an interruption of that trade—when we have reason to fear that the action of the United States will prove hostile to the continuance of free commercial relations with this country—when we know that the consideration of this question is not grounded on just views of the material advantages resulting to each country—but that the irritation connected with political events exercises a predominant influence over the minds of American statesmen,[1] it is the duty of the House to provide, if possible, other outlets for our productions. If we have reason to fear that one door is about to be closed to our trade, it is the duty of the House to endeavour to open another; to provide against a coming evil of the kind feared by timely expansion in another direction; to seek by free trade with our own fellow-colonists for a continued and uninterrupted commerce which will not be liable to be disturbed at the capricious will of any foreign country. On this ground, therefore, we may well come to the conclusion that the union between these colonies is demanded alike on account of their extensive resources, and because of the peculiar position in which they stand relatively to each other, to Great Britain, and to the United States. All these are questions which fall within the province of the General Government, as proposed in the resolutions before the House, and whatever may be the doubts and fears of any one with respect to the details of the organization by which it is proposed to work the new system of Confederation, no one can doubt that the great interests of trade and commerce will be best promoted and developed by being entrusted to

[1] One of the chief reasons for the American denunciation of the Reciprocity Treaty was anger at Canadian manifestations of sympathy with the South during the Civil War.

Digitized by Google

one central power, which will wield them in the common interest.[1]

Hon. George Brown: It is with no ordinary gratification I rise to address the House on this occasion. I cannot help feeling that the struggle of half a life-time for constitutional reform—the agitations in the country, and the fierce contests in this chamber—the strife and the discord and the abuse of many years,—are all compensated by the great scheme of reform which is now in your hands. The Attorney-General for Upper Canada, as well as the Attorney-General for Lower Canada, in addressing the House last night, were anxious to have it understood that this scheme for uniting British America under one government, is something different from "representation by population,"—is something different from "joint authority,"—but is in fact the very scheme of the Government of which they were members in 1858. Now, sir, it is all very well that my honourable friends should receive credit for the large share they have contributed towards maturing the measure before the House; but I could not help reflecting while they spoke, that if this was their very scheme in 1858, they succeeded wonderfully in bottling it up from all the world except themselves, and I could not help regretting that we had to wait till 1864 until this mysterious plant of 1858 was forced to fruition. For myself, sir, I care not who gets the credit of this scheme,—I believe it contains the best features of all the suggestions that have been made in the last ten years for the settlement of our troubles; and the whole feeling in my mind now is one of joy and thankfulness that there were found men of position and influence in Canada who, at a moment of serious crisis, had nerve and patriotism enough to cast aside political partisanship, to banish personal considerations, and unite for the accomplishment of a measure so fraught with advantage to their common country. It was a bold step in the then existing state of public feeling for many members of the House to vote for the Constitutional Committee moved for by me last session—it was a very bold step for many of the members of that committee to speak

[1] Galt was at this time Finance Minister. The remainder of his speech was devoted to a statement of the arrangements made for taking over the debts of the colonies, and of the economies made possible by Federation.

Digitized by Google

and vote candidly upon it—it was a still bolder thing for many to place their names to the report that emanated from that committee,—but it was an infinitely bolder step for the gentlemen who now occupy these treasury benches, to brave the misconceptions and suspicions that would certainly attach to the act, and enter the same Government. And it is not to be denied that such a Coalition demanded no ordinary justification. But who does not feel that every one of us has to-day ample justification and reward for all we did in the document now under discussion? But seven short months have passed away since the Coalition Government was formed, yet already are we submitting a scheme well weighed and matured, for the erection of a future empire,—a scheme which has been received at home and abroad with almost universal approval. . . . Since the Coalition was formed, and its policy of Federal union announced, there have been no fewer than twenty-five parliamentary elections—fourteen for members of the Upper House, and eleven for members of the Lower House. At the fourteen Upper House contests, but three candidates dared to show themselves before the people in opposition to the Government scheme; and of these, two were rejected, and one—only one—succeeded in finding a seat. At the eleven contests for the Lower House, but one candidate on either side of politics ventured to oppose the scheme, and I hope that even he will yet cast his vote in favour of Confederation. Of these twenty-five electoral contests, fourteen were in Upper Canada, but not at one of them did a candidate appear in opposition to our scheme. And let it be observed how large a portion of the country these twenty-five electoral districts embraced. It is true that the eleven Lower House elections only included that number of counties, but the fourteen Upper House elections embraced no fewer than forty counties. Of the 130 constituencies, therefore, into which Canada is divided for representation in this chamber, not fewer than fifty have been called on since our scheme was announced to pronounce at the polls their verdict upon it, and at the whole of them but four candidates on both sides of politics ventured to give it opposition. Was I not right then in asserting that the electors of Canada had, in the most marked manner, pronounced in favour of the scheme? And will honourable gentlemen deny that the people and

Digitized by Google

press of Great Britain have received it with acclamations of approval?—that the Government of England have cordially endorsed and accepted it?—aye, that even the press and the public men of the United States have spoken of it with a degree of respect they never before accorded to any colonial movement? Sir, I venture to assert that no scheme of equal magnitude, ever placed before the world, was received with higher eulogiums, with more universal approbation, than the measure we have now the honour of submitting for the acceptance of the Canadian Parliament. And no higher eulogy could, I think, be pronounced than that I heard a few weeks ago from the lips of one of the foremost of British statesmen, that the system of government we proposed seemed to him a happy compound of the best features of the British and American Constitutions. And well, Mr. Speaker, might our present attitude in Canada arrest the earnest attention of other countries. Here is a people composed of two distinct races, speaking different languages, with religious and social and municipal and educational institutions totally different; with sectional hostilities of such a character as to render government for many years well-nigh impossible; with a Constitution so unjust in the view of one section as to justify any resort to enforce a remedy. And yet, sir, here we sit, patiently and temperately discussing how these great evils and hostilities may justly and amicably be swept away for ever. We are endeavouring, to adjust harmoniously greater difficulties than have plunged other countries into all the horrors of civil war. We are striving to do peacefully and satisfactorily what Holland and Belgium, after years of strife, were unable to accomplish. We are seeking by calm discussion to settle questions that Austria and Hungary, that Denmark and Germany, that Russia and Poland, could only crush by the iron heel of armed force. We are seeking to do without foreign intervention that which deluged in blood the sunny plains of Italy. We are striving to settle for ever issues hardly less momentous than those that have rent the neighbouring republic and are now exposing it to all the horrors of civil war. Have we not then, Mr. Speaker, great cause of thankfulness that we have found a better way for the solution of our troubles than that which has entailed on other countries such deplorable results?

Digitized by Google

And should not every one of us endeavour to rise to the magnitude of the occasion, and earnestly seek to deal with this question to the end in the same candid and conciliatory spirit in which, so far, it has been discussed? The scene presented by this chamber at this moment, I venture to affirm, has few parallels in history. One hundred years have passed away since these provinces became by conquest part of the British Empire. I speak in no boastful spirit—I desire not for a moment to excite a painful thought—what was then the fortune of war of the brave French nation, might have been ours on that well-fought field. I recall those olden times merely to mark the fact that here sit to-day the descendants of the victors and the vanquished in the fight of 1759, with all the differences of language, religion, civil law, and social habit, nearly as distinctly marked as they were a century ago. Here we sit to-day seeking amicably to find a remedy for constitutional evils and injustice complained of—by the vanquished? No, sir—but complained of by the conquerors! Here sit the representatives of the British population claiming justice—only justice; and here sit the representatives of the French population, discussing in the French tongue whether we shall have it.[1] One hundred years have passed away since the conquest of Quebec, but here sit the children of the victor and the vanquished, all avowing hearty attachment to the British Crown—all earnestly deliberating how we shall best extend the blessings of British institutions—how a great people may be established on this continent in close and hearty connection with Great Britain. Where, sir, in the page of history, shall we find a parallel to this? Will it not stand as an imperishable monument to the generosity of British rule? And it is not in Canada alone that this scene is being witnessed. Four other colonies are at this moment occupied as we are—declaring their hearty love for the parent State, and deliberating with us how they may best discharge the great duty entrusted to their hands, and give their aid in developing the teeming resources of these vast possessions. And well, Mr. Speaker, may the

[1] By the Union Act, Upper and Lower Canada elected an equal number of representatives. From 1852 onwards Upper Canada had an increasing superiority in population, and Brown had fought long and hard to have the representation changed accordingly.

Digitized by Google

work we have unitedly proposed rouse the ambition and energy of every true man in British America. Look, sir, at the map of the continent of America, and mark that island (Newfoundland) commanding the mouth of the noble river that almost cuts our continent in twain. Well, sir, that island is equal in extent to the kingdom of Portugal. Cross the straits of the mainland, and you touch the hospitable shores of Nova Scotia, a country as large as the kingdom of Greece. Then mark the sister province of New Brunswick—equal in extent to Denmark and Switzerland combined. Pass up the river St. Lawrence to Lower Canada—a country as large as France. Pass on to Upper Canada,—twenty thousand square miles larger than Great Britain and Ireland put together. Cross over the continent to the shores of the Pacific, and you are in British Columbia, the land of golden promise, —equal in extent to the Austrian Empire. I speak not now of the vast Indian Territories that lie between—greater in extent than the whole soil of Russia—and that will ere long, I trust, be opened up to civilization under the auspices of the British American Confederation. Well, sir, the bold scheme in your hands is nothing less than to gather all these countries into one—to organize them all under one government, with the protection of the British flag, and in heartiest sympathy and affection with our fellow-subjects in the land that gave us birth. Our scheme is to establish a government that will seek to turn the tide of European emigration into this northern half of the American continent—that will strive to develop its great natural resources — and that will endeavour to maintain liberty, and justice, and Christianity throughout the land. . . .

No constitution ever framed was without defect; no act of human wisdom was ever free from imperfection; no amount of talent and wisdom and integrity combined in preparing such a scheme could have placed it beyond the reach of criticism. And the framers of this scheme had immense special difficulties to overcome. We had the prejudices of race and language and religion to deal with; and we had to encounter all the rivalries of trade and commerce, and all the jealousies of diversified local interests. To assert, then, that our scheme is without fault, would be folly. It was necessarily the work of concession; not one of the

Digitized by Google

thirty-three framers but had, on some points, to yield his opinions; and, for myself, I freely admit that I struggled earnestly, for days together, to have portions of the scheme amended. But, Mr. Speaker, admitting all this—admitting all the difficulties that beset us—admitting frankly that defects in the measure exist—I say that, taking the scheme as a whole, it has my cordial, enthusiastic support, without hesitation or reservation. I believe it will accomplish all, and more than all, that we, who have so long fought the battle of parliamentary reform, ever hoped to see accomplished. I believe that, while granting security for local interests, it will give free scope for carrying out the will of the whole people in general matters—that it will draw closer the bonds that unite us to Great Britain—and that it will lay the foundations deep and strong of a powerful and prosperous people. And if the House will allow me to trespass to a somewhat unusual degree on its indulgence, I am satisfied that I can clearly establish that such are the results fairly to be anticipated from the measure.

There are two views in which this scheme may be regarded, namely, the existing evils it will remedy, and the new advantages it will secure for us as a people. Let us begin by examining its remedial provisions. First, then, it applies a complete and satisfactory remedy to the injustice of the existing system of parliamentary representation. The people of Upper Canada have bitterly complained that though they numbered four hundred thousand souls more than the population of Lower Canada, and though they have contributed three or four pounds to the general revenue for every pound contributed by the sister province, yet the Lower Canadians send to Parliament as many representatives as they do. Now, sir, the measure in your hands brings this injustice to an end;—it sweeps away the line of demarcation between the two sections on all matters common to the whole province; it gives representation according to numbers wherever found in the House of Assembly; and it provides a simple and convenient system for readjusting the representation after each decennial census . . . Hitherto we in Upper Canada have been paying a vast proportion of the taxes, with little or no control over the expenditure. But, under this plan, by our just influence in the Lower Chamber, we shall hold the purse strings. If, from this

Digitized by Google

concession of equality in the Upper Chamber, we are restrained from forcing through measures which our friends of Lower Canada may consider injurious to their interests, we shall, at any rate, have power, which we never had before, to prevent them from forcing through whatever we may deem unjust to us. I think the compromise a fair one, and am persuaded that it will work easily and satisfactorily. But it has been said that the members of the Upper House ought not to be appointed by the Crown, but should continue to be elected by the people at large. On that question my views have been often expressed. I have always been opposed to a second elective chamber, and I am so still, from the conviction that two elective houses are inconsistent with the right working of the British parliamentary system. I voted, almost alone, against the change when the Council was made elective, but I have lived to see a vast majority of those who did the deed wish it had not been done. It is quite true, and I am glad to acknowledge it, that many evils anticipated from the change, when the measure was adopted, have not been realized. I readily admit that men of the highest character and position have been brought into the Council by the elective system, but it is equally true that the system of appointment brought into it men of the highest character and position. Whether appointed by the Crown or elected by the people, since the introduction of parliamentary government, the men who have composed the Upper House of this Legislature have been men who would have done honour to any legislature in the world. But what we most feared was, that the Legislative Councillors would be elected under party responsibilities; that a partisan spirit would soon show itself in the chamber; and that the right would soon be asserted to an equal control with this House over money bills. That fear has not been realized to any dangerous extent. But is it not possible that such a claim might ere long be asserted? Do we not hear, even now, mutterings of a coming demand for it? Nor can we forget that the elected members came into that chamber gradually; that the large number of old appointed members exercised much influence in maintaining the old forms of the House, the old style of debate, and the old barriers against encroachment on the privileges of the commons. But the appointed members of

Digitized by Google

the Council are gradually passing away, and when the elective element becomes supreme, who will venture to affirm that the Council would not claim that power over money bills which this House claims as of right belonging to itself? Could they not justly say that they represent the people as well as we do, and that the control of the purse strings ought, therefore, to belong to them as much as to us? It is said they have not the power. But what is to prevent them from enforcing it? Suppose we had a conservative majority here, and a reform majority above—or a conservative majority above and a reform majority here—all elected under party obligations—what is to prevent a deadlock between the chambers? It may be called unconstitutional—but what is to prevent the Councillors (especially if they feel that in the dispute of the hour they have the country at their back) from practically exercising all the powers that belong to us? They might amend our money bills, they might throw out all our bills if they liked, and bring to a stop the whole machinery of government. And what could we do to prevent them? . . .

The second feature of this scheme as a remedial measure is, that it removes, to a large extent, the injustice of which Upper Canada has complained in financial matters. We in Upper Canada have complained that though we paid into the public treasury more than three-fourths of the whole revenue, we had less control over the system of taxation and the expenditure of the public moneys than the people of Lower Canada. Well, sir, the scheme in your hand remedies that. The absurd line of separation between the provinces is swept away for general matters; we are to have seventeen additional members in the house that holds the purse; and the taxpayers of the country, wherever they reside, will have their just share of influence over revenue and expenditure. We have also complained that immense sums of public money have been systematically taken from the public chest for local purposes of Lower Canada, in which the people of Upper Canada had no interest whatever, though compelled to contribute three-fourths of the cash. Well, sir, this scheme remedies that. All local matters are to be banished from the General Legislature; local governments are to have control over local affairs, and if our friends in Lower Canada choose to be extravagant, they

Digitized by Google

will have to bear the burden of it themselves. No longer shall we have to complain that one section pays the cash while the other spends it; hereafter, they who pay will spend, and they who spend more than they ought will have to bear the brunt. It was a great thing to accomplish this, if we had accomplished nothing more—for if we look back on our doings of the last fifteen years, I think it will be acknowledged that the greatest jobs perpetrated were of a local character—that our fiercest contests were about local matters that stirred up sectional jealousies and indignation to its deepest depth. We have further complained that if a sum was properly demanded for some legitimate local purpose in one section, an equivalent sum had to be appropriated to the other as an offset—thereby entailing prodigal expenditure, and unnecessarily increasing the public debt. Well, sir, this scheme puts an end to that. Each province is to determine for itself its own wants, and to find the money to meet them from its own resources. But, sir, I am told that though true it is that local matters are to be separated and the burden of local expenditure placed upon local shoulders, we have made an exception from that principle in providing that a subsidy of eighty cents per head shall be taken from the federal chest and granted to the local governments for local purposes. Undoubtedly this is the fact—and I do not hesitate to admit that it would have been better if this had been otherwise. I trust I commit no breach of discretion in stating that in Conference I was one of the strongest advocates for defraying the whole of the local expenditures of the local governments by means of direct taxation, and that there were liberal men in all sections of the provinces who would gladly have had it so arranged. But, Mr. Speaker, there was one difficulty in the way—a difficulty which has often before been encountered in this world—and that difficulty was simply this, it could not be done. We could neither have carried it in Conference nor yet in any one of the existing provincial legislatures. Our friends in Lower Canada, I am afraid, have a constitutional disinclination to direct taxation, and it was obvious that if the Confederation scheme had had attached to it a provision for the imposition of such a system of taxation, my honourable friends opposite would have had a much better chance of success in blowing the bellows of agita-

Digitized by Google

tion than they now have. The objection, moreover, was not confined to Lower Canada—all the Lower Provinces stood in exactly the same position. They have not a municipal system such as we have, discharging many of the functions of government; but their General Government performs all the duties which in Upper Canada devolve upon our municipal councils, as well as upon Parliament. If then the Lower Provinces had been asked to maintain their customs duties for federal purposes, and to impose on themselves by the same act direct taxation for all their local purposes, the chances of carrying the scheme of union would have been greatly lessened. But I apprehend that if we did not succeed in putting this matter on the footing that would have been the best, at least we did the next best thing. Two courses were open to us—either to surrender to the local governments some source of indirect revenue, some tax which the General Government proposed to retain,—or to collect the money by the federal machinery, and distribute it to the local governments for local purposes. And we decided in favour of the latter. . . .

There is another great evil in our existing system that this scheme remedies; it secures to the people of each province full control over the administration of their own internal affairs. We in Upper Canada have complained that the minority of our representatives, the party defeated at the polls of Upper Canada, have been, year after year, kept in office by Lower Canada votes, and that all the local patronage of our section has been dispensed by those who did not possess the confidence of the people. Well, sir, this scheme remedies that. The local patronage will be under local control, and the wishes of the majority in each section will be carried out in all local matters. We have complained that the land system was not according to the views of our western people; that free lands for actual settlers was the right policy for us—that the price of a piece of land squeezed out of an immigrant was no consideration in comparison with the settlement among us of a hardy and industrious family; and that the colonization road system was far from satisfactory. Well, sir, this scheme remedies that. Each province is to have control of its own crown lands, crown timber and crown minerals,—and will be free to take such steps for developing them as

Digitized by Google

each deems best. We have complained that local works of various kinds—roads, bridges and landing piers, court houses, gaols and other structures—have been erected in an inequitable and improvident manner. Well, sir, this scheme remedies that; all local works are to be constructed by the localities and defrayed from local funds. And so on through the whole extensive details of internal local administration will this reform extend. The people of Upper Canada will have the entire control of their local matters, and will no longer have to betake themselves to Quebec for leave to open a road, to select a county town, or appoint a coroner. But I am told that to this general principle of placing all local matters under local control, an exception has been made in regard to the common schools. The clause complained of is as follows :—

6. Education; saving the rights and privileges which the Protestant or Catholic minority in both Canadas may possess as to their Denominational Schools at the time when the Union goes into operation.

Now, I need hardly remind the House that I have always opposed and continue to oppose the system of sectarian education, so far as the public chest is concerned. I have never had any hesitation on that point. I have never been able to see why all the people of the province, to whatever sect they may belong, should not send their children to the same common schools to receive the ordinary branches of instruction. I regard the parent and the pastor as the best religious instructors—and so long as the religious faith of the children is uninterfered with, and ample opportunity afforded to the clergy to give religious instruction to the children of their flocks, I cannot conceive any sound objection to mixed schools. But while in the Conference and elsewhere I have always maintained this view, and always given my vote against sectarian public schools, I am bound to admit, as I have always admitted, that the sectarian system, carried to the limited extent it has yet been in Upper Canada, and confined as it chiefly is to cities and towns, has not been a very great practical injury. The real cause of alarm was that the admission of the sectarian principle was there, and that at any moment it might be extended to such a degree as to split up our school system altogether. There are but a hundred separate

Digitized by Google

schools in Upper Canada, out of some four thousand, and all Roman Catholic. But if the Roman Catholics are entitled to separate schools and to go on extending their operations, so are the members of the Church of England, the Presbyterians, the Methodists, and all other sects. No candid Roman Catholic will deny this for a moment; and there lay the great danger to our educational fabric, that the separate system might gradually extend itself until the whole country was studded with nurseries of sectarianism, most hurtful to the best interests of the province, and entailing an enormous expense to sustain the hosts of teachers that so prodigal a system of public instruction must inevitably entail. Now it is known to every honourable member of this House that an Act was passed in 1863, as a final settlement of this sectarian controversy. I was not in Quebec at the time, but if I had been here I would have voted against that bill, because it extended the facilities for establishing separate schools. It had, however, this good feature, that it was accepted by the Roman Catholic authorities, and carried through Parliament as a final compromise of the question in Upper Canada. When, therefore, it was proposed that a provision should be inserted in the Confederation scheme to bind that compact of 1863 and declare it a final settlement, so that we should not be compelled, as we have been since 1849, to stand constantly to our arms, awaiting fresh attacks upon our common school system, the proposition seemed to me one that was not rashly to be rejected. I admit that, from my point of view, this is a blot on the scheme before the House; it is, confessedly, one of the concessions from our side that had to be made to secure this great measure of reform. But assuredly, I, for one, have not the slightest hesitation in accepting it as a necessary condition of the scheme of union, and doubly acceptable must it be in the eyes of honourable gentlemen opposite, who were the authors of the bill of 1863. But it was urged that though this arrangement might perhaps be fair as regards Upper Canada, it was not so as regards Lower Canada, for there were matters of which the British population have long complained, and some amendments to the existing School Act were required to secure them equal justice. Well, when this point was raised, gentlemen of all parties in Lower Canada at once expressed themselves prepared

Digitized by Google

to treat it in a frank and conciliatory manner, with a view to removing any injustice that might be shown to exist; and on this understanding the educational clause was adopted by the Conference. . . .

Viewed then, Mr. Speaker, from a merely Canadian standpoint [1]—viewed solely as a remedial measure—I fearlessly assert that the scheme in your hands is a just and satisfactory remedy for the evils and injustice that have so long distracted the province, and so strongly do I feel this, that were every word of objection urged against our union with the Maritime Provinces just and true to the very letter, I would not hesitate to adopt the union as the price of a measure of constitutional reform in Canada, so just and so complete as now proposed. But, Mr. Speaker, so far from the objections urged against union with the Maritime Provinces being sound, so far from union with them being a drawback to this measure, I regard it as the crowning advantage of the whole scheme. Sir, I make no pretension to having been in past years an advocate of the immediate union of the British American Colonies. I always felt and always said that no statesman could doubt that such was the best and almost the certain future destiny of these colonies; but I doubted greatly whether the right time for the movement had yet arrived. I knew little of the Maritime Provinces or the feelings of their people; the negotiations for a union were likely to be difficult and long protracted, and I was unwilling to accept the hope of a measure so remote and so uncertain in lieu of the practical remedy for practical evils in Canada which we were earnestly seeking to obtain, and which our own Legislature had the power immediately to grant. But of late, sir, all this has been changed. The circumstances are entirely altered. A revolution has occurred in Great Britain on the subject of colonial relations to the parent state—the Government of the United States has become a great warlike power—our commercial relations with the republic are seriously threatened—and every man in British America has now placed before him for solution the practical question, What shall be done in view of the changed relations on which we are about to enter? Shall we continue to

[1] He had been speaking of the extent to which internal differences had frightened the British and foreign capitalist. Later on he applied the same argument to the question of immigration.

Digitized by Google

struggle along as isolated communities, or shall we unite cordially together to extend our commerce, to develop the resources of our country and to defend our soil? But more than this—many of us have learned, since we last met here, far more of the Maritime Provinces than we ever did before. We have visited the Maritime Provinces—we have seen the country—we have met the people and marked their intelligence and their industry and their frugality—we have investigated their public affairs and found them satisfactory—we have discussed terms of union with their statesmen and found that no insuperable obstacle to union exists, and no necessity for long delay. We come to the consideration of the question to-day in a totally different position from what we ever did before—and if the House will grant me its indulgence, I think I can present unanswerable arguments to show that this union of all British America should be heartily and promptly accepted by all the provinces. I am in favour of a union of the British American Colonies, first, because it will raise us from the attitude of a number of inconsiderable colonies into a great and powerful people. . . . When recently in England, I was charged to negotiate with the Imperial Government for the opening up of the North-West territories. In a few days the papers will be laid before the House, and it will then be seen whether or not this Government is in earnest in that matter. Sir, the gentlemen who formed the Conference at Quebec did not enter upon their work with the miserable idea of getting the advantage of each other, but with a due sense of the greatness of the work they had on hand, with an earnest desire to do justice to all, and keeping always in mind that what would benefit one section in such a union must necessarily benefit the whole. It has always appeared to me that the opening up of the North-West ought to be one of the most cherished projects of my honourable friends from Lower Canada. During the discussion on the question for some years back I had occasion to dip deep in North-West lore—into those singularly interesting narratives of life and travels in the North-West in the olden time, and into the history of the struggles for commercial domination in the great fur-bearing regions,—and it has always struck me that the French Canadian people have cause to look back with pride to the bold and successful part they played in the

Digitized by Google

adventures of those days. Nothing perhaps has tended more to create their present national character than the vigorous habits, the power of endurance, the aptitude for out-door life, acquired in their prosecution of the North-West fur trade. Well may they look forward with anxiety to the realization of this part of our scheme, in confident hope that the great north-western traffic shall be once more opened up to the hardy French Canadian traders and *voyageurs*. Last year furs to the value of £280,000 stg. ($1,400,000) were carried from that territory by the Hudson's Bay Company—smuggled off through the ice-bound regions of James's Bay, that the pretence of the barrenness of the country and the difficulty of conveying merchandise by the natural route of the St. Lawrence may be kept up a little longer. Sir, the carrying of merchandise into that country, and bringing down the bales of pelts ought to be ours, and must ere long be ours, as in the days of yore, and when the fertile plains of that great Saskatchewan territory are opened up for settlement and cultivation, I am confident that it will not only add immensely to our annual agricultural products, but bring us sources of mineral and other wealth on which at present we do not reckon. . . .

Hon. T. D'Arcy McGee: Whatever the private writer in his closet may have conceived, whatever even the individual statesman may have designed, so long as the public mind was uninterested in the adoption, even in the discussion of a change in our position so momentous as this, the union of these separate provinces, the individual laboured in vain—perhaps, sir, not wholly in vain, for although his work may not have borne fruit then, it was kindling a fire that would ultimately light up the whole political horizon, and herald the dawn of a better day for our country and our people. Events stronger than advocacy, events stronger than men, have come in at last like the fire behind the invisible writing to bring out the truth of these writings and to impress them upon the mind of every thoughtful man who has considered the position and probable future of these scattered provinces. Before I go further into the details of my subject, I will take this opportunity of congratulating this House and the public of all the provinces upon the extraordinary activity which has been given to this subject since it has become a leading topic of public dis-

Digitized by Google

cussion in the maritime, and what I may call relatively to them, the inland provinces. It is astonishing how active has been the public mind in all those communities since the subject has been fairly launched. I have watched with great attention the expression of public opinion in the Lower Provinces as well as in our own, and I am rejoiced to find that even in the smallest of the provinces I have been able to read writings and speeches which would do no discredit to older and more cultivated communities—articles and speeches worthy of any press and of any audience. The provincial mind, it would seem, under the inspiration of a great question, leaped at a single bound out of the slough of mere mercenary struggles for office, and took post on the high and honourable ground from which alone this great subject can be taken in in all its dimensions,—had risen at once to the true dignity of this discussion with an elasticity that does honour to the communities that have exhibited it, and gives assurance that we have the metal, the material, out of which to construct a new and vigorous nationality. We find in the journals and in the speeches of public men in the Lower Provinces a discussion of the first principles of government, a discussion of the principles of constitutional law, and an intimate knowledge and close application of the leading facts in constitutional history, which gives to me at least the satisfaction and assurance that, if we never went farther in this matter, we have put an end for the present, and I hope for long, to bitterer and smaller controversies. We have given the people some sound mental food, and to every man who has a capacity for discussion we have given a topic upon which he can fitly exercise his powers, no longer gnawing at a file and wasting his abilities in the poor effort of advancing the ends of some paltry faction or party. I can congratulate this House and province and the provinces below, that such is the case, and I may observe, with some satisfaction, that the various authors and writers seem to be speaking or writing as if in the visible presence of all the colonies. They are no longer hole-and-corner celebrities : they seem to think that their words will be scanned and weighed afar off as well as at home. . . .

All, even honourable gentlemen who are opposed to this union, admit that we must do something, and that that something must not be a mere temporary expedient. We

Digitized by Google

are compelled, by warning voices from within and without, to make a change, and a great change. We all, with one voice, who are unionists, declare our conviction that we cannot go on as we have gone; but you, who are all anti-unionists, say—"Oh! that is begging the question; you have not yet proved that." Well, Mr. Speaker, what proofs do the gentlemen want? I presume there are three influences which determine any great change in the course of any individual or state. First — his patron, owner, employer, protector, ally, or friend; or, in politics, "Imperial connection." Secondly, his partner, comrade, or fellow-labourer, or near neighbour. And, thirdly, the man himself, or the state itself. Now, in our case, all three causes have concurred to warn and force us into a new course of conduct. What are these warnings? We have had at least three. The first is from England, and is a friendly warning. England warned us by several matters of fact, according to her custom, rather than by verbiage, that the colonies had entered upon a new era of existence, a new phase in their career. She has given us this warning in several different shapes—when she gave us "Responsible Government"—when she adopted Free Trade—when she repealed the Navigation laws — and when, three or four years ago, she commenced that series of official despatches in relation to militia and defence which she has ever since poured in on us, in a steady stream, always bearing the same solemn burthen—"Prepare! prepare! prepare!" These warnings gave us notice that the old order of things between the colonies and the Mother Country had ceased, and that a new order must take its place. About four years ago, the first despatches began to be addressed to this country, from the Colonial Office, upon the subject. From that day to this there has been a steady stream of despatches in this direction, either upon particular or general points connected with our defence; and I venture to say that, if bound up together, the despatches of the lamented Duke of Newcastle alone would make a respectable volume—all notifying this Government, by the advices they conveyed, that the relations—the military apart from the political and commercial relations of this province to the Mother Country had changed; and we were told in the most explicit language that could be employed, that we were no

Digitized by Google

longer to consider ourselves, in relation to defence, in the same position we formerly occupied towards the Mother Country. Well, these warnings have been friendly warnings ; and if we have failed to do our part in regard to them, we must, at all events, say this, that they were addressed to our Government so continuously and so strenuously that they freed the Imperial power of the responsibility for whatever might follow, because they showed to the colonies clearly what, in the event of certain contingencies arising, they had to expect. We may grumble or not at the necessity of preparation England imposes upon us, but, whether we like it or not, we have, at all events, been told that we have entered upon a new era in our military relations to the rest of the Empire. Then, sir, in the second place, there came what I may call the other warning from without—the American warning. Republican America gave us her notices in times past, through her press, and her demagogues and her statesmen,—but of late days she has given us much more intelligible notices—such as the notice to abrogate the Reciprocity Treaty, and to arm the lakes, contrary to the provisions of the addenda to the treaty of 1818. She has given us another notice in imposing a vexatious passport system ; another in her avowed purpose to construct a ship canal round the falls of Niagara, so as " to pass war vessels from Lake Ontario to Lake Erie ;" and yet another, the most striking one of all, has been given to us, if we will only understand it, by the enormous expansion of the American army and navy. . . .

Mr. A. A. Dorion : I should have desired to make my remarks to the House in French, but considering the large number of honourable members who are not familiar with that language, I think it my duty to speak at the present time in English. In rising on this occasion to address the House on the important question submitted to us, I must say I do so with an unusual degree of embarrassment, not only on account of the importance of the subject of our deliberations, but also because I have to differ from many of those with whom I have been in the habit of acting ever since I first entered into political life. Yet, Mr. Speaker, when I consider the questions raised by the resolutions submitted by the Government, I find that whether they be purely political ones, such as the proposal to restrict the influence and

Digitized by Google

control of the people over the Legislature of the country by substituting a Chamber nominated by the Crown for an Elective Legislative Council, or whether they are purely commercial in their character, such as that regarding the Intercolonial Railway, or the larger question of Confederation itself, I still hold the same views that I held, in common with others who have now changed their opinions, when the subjects were first mooted. And as I have not heard, since the first opening of this debate, any reason for substituting a nominated for an elective Upper Chamber that was not fully argued out in 1856, when, by an overwhelming majority of this House, it was decided that the elective principle should prevail—as I have not heard any reason why we should pledge our credit and resources to the construction of the Intercolonial Railway, even previous to any estimate of its cost being made, that was not urged in 1862 when the question was before the country—nor any reason for intercolonial union that was not raised in 1858, when the present Hon. Finance Minister pressed the question on the attention of the Imperial authorities—I do not see on what ground these several subjects which were then so unpopular, and those views which were then almost universally repudiated, should now be more favourably considered by the people of this country—I fail to perceive why those once unpalatable measures, now coupled with additions to the burdens of the people, should have grown into the public favour. I cannot understand why I or any members of this House should change our views merely because certain other members have, when we do not conscientiously think such change would be for the benefit of the country.

This scheme, sir, is submitted to us on two grounds; first, the necessity for meeting the constitutional difficulties which have arisen between Upper and Lower Canada, owing to the growing demands on the part of Upper Canada for representation by population; and, secondly, the necessity for providing more efficient means for the defence of the country than now exist. These are the only two grounds we have heard stated for the propositions now submitted to us; and, sir, I shall apply myself to explain my views on these two subjects, and also upon the scheme generally. When on the first question, I trust I shall be permitted

Digitized by Google

to go a little into the history of the agitation for representation by population, for I owe it to myself, to my constituents and the country. My name has been used in various ways. It has sometimes been said that I was entirely favourable to representation by population—at other times that I was entirely favourable to the Confederation of the provinces, and I will now endeavour, once more, to state as clearly as possible what my real views have been and still are. The first time representation by population was mooted in this House, on behalf of Upper Canada, was, I believe, in the Session of 1852, when the Conservative party took it up, and the Hon. Sir Allan Macnab moved resolutions in favour of the principle. We then found the Conservatives arrayed in support of this constitutional change. It had been mooted before on behalf of Lower Canada, but the Upper Canadians had all opposed it. I think two votes were taken in 1852, and on one of these occasions the Hon. Attorney-General West (Hon. J. A. Macdonald) voted for it; it came up incidentally. In 1854 the Macnab-Morin coalition took place, and we heard no more of representation by population from that quarter—that is, as mooted by the Conservative party, who from that moment uniformly opposed it on every occasion. It was, however, taken up by the present Hon. President of the Council, the member for South Oxford, and with the energy and vigour he brings to bear on every question he takes in hand, he caused such an agitation in its behalf as almost threatened a revolution. As the agitation in the country increased, so did the vote for it in this House increase, and on several occasions I expressed my views upon the subject. I never shirked the question—I never hesitated to say that something ought to be done to meet the just claims of Upper Canada, and that representation based on population was in the abstract a just and correct principle. I held, at the same time, there were reasons why Lower Canada could not grant it; I entreated Lower Canadian representatives to show themselves disposed to meet the views of Upper Canada by making, at any rate, a counter proposition; and in 1856, when Parliament was sitting in Toronto,[1] I, for the

[1] After the riots of 1849 (see p. 317), the seat of Government was removed from Montreal, and Parliament sat for periods of four years alternately at Quebec and Toronto, until 1866, when the seat of Government was permanently established at Ottawa.

Digitized by Google

first time, suggested that one means of getting over the difficulty would be to substitute for the present Legislative union a Confederation of the two Canadas, by means of which all local questions could be consigned to the deliberations of local legislatures, with a central government having control of commercial and other questions of common or general interest. I stated that, considering the different religious faith, the different language, the different laws that prevailed in the two sections of the country, this was the best way to meet the difficulty; to leave to a general government questions of trade, currency, banking, public works of a general character, etc., and to commit to the decision of local legislatures all matters of a local bearing. At the same time I stated that, if these views should not prevail, I would certainly go for representation by population, with such checks and guarantees as would secure the interests of each section of the country, and preserve to Lower Canada its cherished institutions. This speech, sir, has been twisted in all sorts of ways. I have heard it quoted to prove that I was in favour of representation by population, pure and simple; that I was in favour of a Confederation of the provinces and for several other purposes, just as it suited the occasion or the purpose of those who quoted it. The first time the matter was put to a practical test was in 1858. On the resignation of the Macdonald-Cartier Administration, the Brown-Dorion Government was formed, and one of the agreements made between its members was that the constitutional question should be taken up and settled, either by a Confederation of the two provinces or by representation according to population, with such checks and guarantees as would secure the religious faith, the laws, the language, and the peculiar institutions of each section of the country from encroachments on the part of the other. The subject came up again in the latter part of 1859, when the Toronto Convention took place. I should, however, first say that, when the Brown-Dorion Administration was formed, the Hon. the President of the Council urged very strongly that representation by population should be taken up as the method by which to settle the constitutional question; while, on the contrary, I saw the difficulty of so taking it up, even with such checks and guarantees as were spoken of, and made the counter-

Digitized by Google

proposition that a Confederation of the two provinces should be formed. Of course as our Administration was so short-lived, the subject was not discussed in all its bearings; but if we could have come to an agreement on one or the other mode, that one would have been submitted as the solution for the evils complained of—it being however distinctly understood that I would not attempt to carry any such measure through without obtaining for it a majority from Lower Canada. I would never have tried to make any change in the Constitution without ascertaining that the people in my own section of the province were in favour of such a change. To return to the Toronto Convention. I was invited to attend it, but though I was unable to do so, certain communications took place, and a meeting of the liberal members of the House from Lower Canada was held, and a document issued, signed by the present Minister of Agriculture (Hon. Mr. McGee), Hon. Mr. Dessaulles, Hon. Mr. Drummond, and myself. The document was given to the public for the purpose of setting forth the views which we held as to the settlement of the difficulty. Pretended extracts have been given from that document, as from my speech, to attempt to prove all sorts of things as being my views, but I can show most clearly that the proposition made in it was just that which had been made in 1858, viz., the Confederation of the two provinces, with some joint authority for both. Both at that time, and at the time of the formation of the Brown-Dorion Administration, various suggestions were made as to the carrying out of the plan of confederating the two Canadas. Some thought that two entirely distinct legislatures should be formed; one local for Lower Canada, another local for Upper Canada, with a general legislature acting for both. Others suggested the idea that the same legislature might fulfil all purposes; that the same body might meet and deliberate on questions of common interest, and that the members for each section might then separate and discuss all matters of a sectional character. Others, again, said the same result might be obtained by having but one legislature, and insisting that no laws affecting either section of the province should be carried, unless with the support of a majority from the section affected by them. These three plans were suggested—the first to have two entirely distinct legislative

Digitized by Google

bodies, one for general purposes, others for local ones; the second, to have one legislature, of which the parts should have the right to act separately for local objects after general business had been disposed of; the third, to have but one body, but to resolve that no legislative act of a local nature should pass without the consent of a majority of the representatives from that locality. The document to which I have just referred, issued in October, 1859, contained this language on the subject:—

Your Committee are impressed with the conviction that whether we consider the present needs or the probable future condition of the country, the true, the statesman-like solution is to be sought in the substitution of a purely federative for the present legislative union; the former, it is believed, would enable us to escape all the evils, and to retain all the advantages, appertaining to the existing union.

* * * * *

The proposition to federalize the Canadian union is not new. On the contrary, it has been frequently mooted in Parliament and the press during the last few years. It was no doubt suggested by the example of the neighbouring States, where the admirable adaptation of the federal system to the government of an extensive territory, inhabited by people of divers origins, creeds, laws and customs, has been amply demonstrated; but shape and consistency were first imparted to it in 1856, when it was formally submitted to Parliament by the Lower Canada Opposition, as offering, in their judgment, the true corrective of the abuses generated under the present system.

The document further went on to say (I am translating from the document published by the Lower Canada liberals in 1859):—

The powers delegated to the General or Federal Government ought to be those only which are essential for the ends of the Confederation, and consequently we ought to reserve for the sub-divisions as ample powers as possible. Customs, finance, laws regulating the currency, patent rights, Crown lands and those public works which are of common interest for all parts of the province, ought to be the principal, if not the only subject submitted to the control of the Federal Government; while all that belongs to matters of a purely local character, such as education, the administration of justice, the militia, the laws relating to property, police, etc., ought to be referred to the local governments, whose powers ought generally to extend to all subjects which would not be given to the General Government. The system thus proposed would in no way diminish the importance of the colony nor impair its credit, while it presents the advantage of being susceptible, without any disturbance of the federal economy, of such territorial extension as circumstances may hereafter render desirable.

Well, sir, I have not a word of all this to take back. I still hold to the same views, the same opinions. I still

Digitized by Google

think that a Federal union of Canada might hereafter extend so as to embrace other territories either west or east; that such a system is well adapted to admit of territorial expansion without any disturbance of the federal economy, but I cannot understand how this plain sentence should be considered by the Hon. President of the Council, or by other honourable members who have spoken in the other House, as any indication that I have ever been in favour of Confederation with the other British Provinces. There is nothing I have ever said or written that can be construed to mean that I was ever in favour of such a proposition. On the contrary, whenever the question came up I set my face against it. I asserted that such a confederation could only bring trouble and embarrassment, that there was no social, no commercial connection between the provinces proposed to be united —nothing to justify their union at the present juncture. Of course I do not say that I shall be opposed to their Confederation for all time to come. Population may extend over the wilderness that now lies between the Maritime Provinces and ourselves, and commercial intercourse may increase sufficiently to render Confederation desirable. My speeches have been paraded of late in all the ministerial papers—misconstrued, mistranslated, falsified in every way—for the purpose of making the public believe that in former times I held different views from those I now do. A French paper has said that I called with all my heart for the Confederation of the provinces—(*que j'appelais de tous mes vœux la confédération des provinces*). But I say here, as I said in 1856, and as I said in 1861 also, that I am opposed to this Confederation now. In the *Mirror of Parliament*, which contains a report, though a very bad one, of my speech in 1861, I find that I said on that occasion :—

> The time may come when it will be necessary to have a Confederation of all the provinces; . . . but the present time is not for such a scheme.

This is the speech which has been held to signify that I was anxious for Confederation, that I should like nothing better. Why? I distinctly said that though the time might come when it would become necessary, it was not desirable under existing circumstances. In 1862 I was not in Parliament; the Cartier-Macdonald Administration

Digitized by Google

was dismissed, and my honourable friend, the member for Cornwall (Hon. John S. Macdonald), was called upon to form a new one. He applied to Mr. Sicotte to form the Lower Canada section, while he himself undertook the formation of the Upper Canada portion. The question of representation by population then necessarily came up for settlement—this time at the hands of the Liberal party who had voted for it year after year—and when I came down to Quebec, summoned by telegraph, I found the arrangements made, the policy of the new government was settled, representation by population was excluded. The Liberal party from Upper Canada, sir, to my surprise, had decided that it was not to be taken up—that they were going into office just as the Conservative party had done before on a similar occasion in 1854; they decided that they would sustain an Administration which made it a closed question, and whose members all pledged themselves to vote against it.

Mr. *Rankin:* No, no.

Mr. *Dorion:* If not, I was misinformed. I certainly understood that the Administration was formed on the understanding that every member of it should vote against the question of representation by population whenever it came up, and that the Upper Canada party would support the Administration so formed. At any rate the Upper Canada Liberal party supported, for eleven months, a government pledged to exclude representation by population from the category of open questions, and agreed to lay that question aside. I hear an honourable gentleman say it was not so, that he did not agree to lay aside representation by population then, but if he did not then has he not done so since? He declared at a public meeting the other day that representation by population was no cure for the evils afflicting Upper Canada. The members from Upper Canada who had joined the Macdonald-Sicotte Government had certainly abandoned representation by population, by entering into an Administration which bound every one of them to vote against it. The Hon. Provincial Secretary[1] had stated publicly in Ottawa, in January, 1864, that it had been abandoned by the Liberal party at the Toronto Convention in 1859; and although he had at the time been soundly abused for this by the *Globe* and by those of his

[1] Hon. Wm. MacDougall, a prominent liberal.

Digitized by Google

party who look to the *Globe* as their political gospel, he had now the satisfaction of seeing the honourable member for Lambton,[1] and some others who formerly held very strong views on this question, acknowledge, as they had done at a public meeting held at Toronto about three weeks ago, that they also considered representation by population as applied to Canada no remedy for the Upper Province, and that it was not a measure the Liberals ought to insist upon, and that it had been abandoned. Yes, the question was in effect abandoned when in November, 1859, six hundred delegates from all parts of Upper Canada attended the Reform Convention at Toronto, and agreed to advocate a Confederation of the two Canadas, by giving to each province a local legislature, with some joint authority, to carry on the general business common to both. The honourable member on my left[2] was present on the occasion, and has told me that he never saw a more respectable, a more educated, or more intelligent assemblage brought together in such numbers to discuss public questions. But that scheme did not attract much attention out of the Convention. It took no hold on the popular mind. Shortly before that, in 1858, the present Hon. Finance Minister, who then sat on the cross-benches, made a speech of two or three hours' duration, in which, with all that force and ability for which he is distinguished, he expounded and advocated the Confederation of the whole of the British North American Provinces. He was then assisted in its advocacy by the present Hon. Minister of Agriculture; and, subsequently, on becoming a member of the Cartier-Macdonald Administration, he went to England and drew the attention of the Imperial authorities to the scheme of Confederation of all those provinces. The Hon. Finance Minister received an answer not very encouraging; and that which he received from this country was still less encouraging. Though the Administration was formed with the understanding of effecting the Confederation of all the provinces, and it was the main plank of their platform, they never dared to submit the question to Parliament at all. Subsequently, in 1861, the honourable member for South Oxford[3]

[1] Mr. Alex. Mackenzie, afterwards (1878-78) Premier of the Dominion.
[2] Hon. L. H. Holton, member for Chateauguay
[3] Hon. George Brown.

Digitized by Google

brought forward a motion based on the resolution at the Toronto Convention. I spoke and voted for it. It was in perfect accord with a notice I had given in 1856, and which was read here by the Hon. President of the Council a few nights ago, and with my often-repeated declarations that I was willing to adopt some measure calculated to remove existing difficulties, without doing injustice to either section ; but while I was willing to do justice to Upper Canada, I always declared that I would not do so by sacrificing the interests of Lower Canada, or placing her in the position of having to beg for justice at the hands of the sister province. I always stated that the difference existing in the religious faith of the people of the two sections, in their language, in their laws, in their prejudices even—for there are prejudices which are respectable and ought to be respected—would prevent any member from Lower Canada, representing a French constituency, from voting for representation by population, pure and simple, and thereby placing the people of Lower Canada in the position of having to trust for the protection of their rights to the people of Upper Canada, who would thereby have the majority in the Legislature. There is at this moment a movement on the part of the British Protestants in Lower Canada to have some protection and guarantee for their educational establishments in this province put into the scheme of Confederation, should it be adopted ; and far from finding fault with them, I respect them the more for their energy in seeking protection for their separate interests. I know that majorities are naturally aggressive and how the possession of power engenders despotism, and I can understand how a majority, animated this moment by the best feelings, might in six or nine months be willing to abuse its power and trample on the rights of the minority, while acting in good faith, and on what it considered to be its right. We know also the ill feelings that might be engendered by such a course. I think it but just that the Protestant minority should be protected in its rights in everything that was dear to it as a distinct nationality, and should not lie at the discretion of the majority in this respect, and for this reason I am ready to extend to my Protestant fellow-citizens in Lower Canada of British origin, the fullest justice in all things, and I wish to see their interests as a minority guaranteed

Digitized by Google

and protected in every scheme which may be adopted. With these views on the question of representation, I pronounced in favour of a Confederation of the two Provinces of Upper and Lower Canada, as the best means of protecting the varied interests of the two sections. But the Confederation I advocated was a real confederation, giving the largest powers to the local governments, and merely a delegated authority to the General Government—in that respect differing *in toto* from the one now proposed, which gives all the powers to the Central Government, and reserves for the local governments the smallest possible amount of freedom of action. There is nothing besides in what I have ever written or said that can be interpreted as favouring a Confederation of all the provinces. This I always opposed. There is no breach of confidence in my saying that in the conversations I had with the Hon. President of the Council, previous to his accepting office,[1] since he has referred to them himself in a speech which he made when re-elected at South Oxford, I positively declined to support any proposition for the Confederation of all the provinces. Very true, sir, I did not refuse to vote for it in committee. I did not vote at all—I was not present when the vote was taken, but I did not conceal my opposition to it. In that speech the Hon. President of the Council also said :—

> Before the negotiations were gone through with, I warned the Hon. Messrs. Holton and Dorion to take action, but they refused me. I felt all the pain of a refusal, but they left me no resource. When the question was asked me by the Government, I said I wanted six members—four from Upper and two from Lower Canada. When asked how many supporters I could bring from Lower Canada, I replied that since Hon. Mr. Dorion did not act, I could bring no supporters.

So, sir, I have the best evidence possible to repudiate the accusation that I was in favour of Confederation of all the provinces in the fact that, before there was any question at all as to who should go into the Government, I stated—and that in the hearing of several honourable members now present—that I would have nothing to do with it because I did not conceive it would be for the interest of the country to have such a Confederation, at all events at the present time. Now, sir, I think I have shown that I neither favoured representation by population pure and simple, nor a Confederation of the Pro-

[1] In June, 1864.

Digitized by Google

vinces; and when honourable gentlemen state that the necessity of settling the question of representation is the origin of this Federation scheme, they labour under a grave misapprehension. There is nothing further from the fact. The representation question was almost altogether abandoned—was played out; there was no agitation about it, and certainly less than there had been for the last ten years. The honourable member for South Oxford, after adopting the views of the Toronto Convention, still persisted in advocating representation by population, but so changed was the feeling that he could hardly get a debate on the motion he made last session for a committee to consider the constitutional difficulties.

There is another cause for this Confederation scheme of which representation by population was made the pretext. It is not so well known, but far more powerful. In the year 1861 Mr. Watkin was sent from England by the Grand Trunk Railway Company. He came with the distinct view of making a large claim on the country for aid, but in the then temper of the people, he soon found that he could not expect to obtain that. Thinking that if he only could put some new scheme afloat which would give a decent pretext to a well disposed Government, he would quietly get the assistance required, he immediately started for the Lower Provinces, and came back after inducing people there to resuscitate the question of the Intercolonial Railway. Parties were readily found to advocate it, if Canada would only pay the piper. A meeting of delegates took place, resolutions were adopted, and an application was made to the Imperial Government for a large contribution to its costs, in the shape of an indemnity for carrying the troops over the road. Mr. Watkin and Hon. Mr. Vankoughnet, who was then a member of the Government, went to England about this scheme, but the Imperial authorities were unwilling to grant the required assistance, and rejected their propositions. Mr. Watkin, although baffled in his expectations, did not give up his project.[1] He returned again to Canada, and by dint of perseverance, induced my honourable friend on my right (Hon. J. S. Macdonald) and other honourable members of his Cabinet to enter into his views. As to the ad-

[1] See *Canada and the United States: Recollections*, 1851-1886, by Sir Ed. W. Watkin (London, 1887).

Digitized by Google

vantages of the Intercolonial Railway, I have not the slightest idea that my honourable friend had any suspicion whatsoever of the motives which animated these Grand Trunk officials, and that their object was to have another haul at the public purse for the Grand Trunk, but this was the origin of the revival of the scheme for constructing the Intercolonial Railway.

Hon. J. S. Macdonald: We found the project then left to us as a legacy by the Cartier-Macdonald Administration.

Hon. A. A. Dorion: So it was. The Macdonald-Sicotte Government found the matter so far advanced that an arrangement had been made for a meeting of delegates of the several provinces to consider again this railway scheme, the other project having failed. At this meeting of delegates, which took place in September, 1862, a new scheme for building the Intercolonial was adopted, by which Canada was to pay five-twelfths and the Lower Provinces seven-twelfths. So unpopular was this arrangement that when its terms were made known, if a vote of the people had been taken upon it, not ten out of every hundred, from Sandwich to Gaspé, would have declared in its favour, although Canada was only to pay five-twelfths of its cost. This project having failed, some other scheme had to be concocted for bringing aid and relief to the unfortunate Grand Trunk—and the Confederation of the British North American Provinces naturally suggested itself to the Grand Trunk officials as the surest means of bringing with it the construction of the Intercolonial Railway. Such was the origin of this Confederation scheme. The Grand Trunk people are at the bottom of it;[1] and I find that at the last meeting of the Grand Trunk Railway Company, Mr. Watkin did in advance congratulate the shareholders and bondholders on the bright prospects opening before them, by the enhanced value which will be given to their shares and bonds, by the adoption of the Confederation scheme and the construction of the Intercolonial as part of the scheme. I repeat, sir, that representation by population had very little to do with bringing about this measure.

[1] This opinion was widely held at the time, and was strengthened by the fact that the Hon. George E. Cartier was the solicitor in Canada for the Grand Trunk Railway. See Sir Richard Cartwright, *Memories of Confederation* (1906).

Digitized by Google

The Taché-Macdonald Government were defeated because the House condemned them for taking without authority $100,000 out of the public chest for the Grand Trunk Railway, at a time when there had not been a party vote on representation by population for one or two sessions. Those who had been the loudest in their advocacy of it had let it drop. I was tracked through Lower Canada as being willing to sell Lower Canada, grant representation by population, and destroy Lower Canadian institutions. I thank God, sir, I never insulted Upper Canada, like some of those who reviled me. I never compared the people of Upper Canada to so many codfish.[1] I showed, on the contrary, that I was always willing to meet the just claims of Upper Canada. Well, without any demand whatever for the agitation of this question, the moment the Government was defeated and there was a necessity for resigning or going before the people, these gentlemen opposite prepared to embrace their greatest opponents and said to themselves, "We will make everything smooth, we will forget past difficulties, provided we can but keep our seats. I hear a voice, sir, which is well known in this House, the voice of the Attorney-General West, saying "Hear, hear." But what was the course of that honourable gentleman last year, when the honourable member for South Oxford had a committee appointed to whom was referred the despatch written by his three colleagues, the Minister of Finance, the Attorney-General East and the Hon. Mr. Ross, who is now no longer a minister? He voted against the appointment of the committee, and, after it was named, as a member of it, he voted against the principle of Confederation. . . . The last vote taken in that committee was about the middle of June, the very day of the crisis, and the honourable gentleman voted against the principle of Confederation of all the provinces, in accordance with the opinions he again and again expressed in this House, as being opposed to all Confederation whatever. When I state that these gentlemen only found out that Confederation was a panacea for all evils, a remedy for all ills, when their seats as ministers were in danger, I come to this con-

[1] Speaking on the subject of "Representation by Population," Cartier had told the House that the excess of population in Upper Canada had no more right to representation than so many codfish in the Bay of Gaspé.

Digitized by Google

clusion quite legitimately, from facts which are well known to this House.

But, sir, it would probably be of very little moment whether I was formerly in favour of Confederation or against it, or whether the Hon. Attorney-General West was in favour of Confederation or opposed to it, if the scheme proposed to us were an equitable one, or one calculated to meet the wishes of the people of this country; but, as I said a minute ago, the scheme was not called for by any considerable proportion of the population. It is not laid before the House as one which was demanded by any number of the people; it is not brought down in response to any call from the people; it is a device of men who are in difficulties, for the purpose of getting out of them. The members of the Taché-Macdonald Government could not appeal to the country after their defeat upon the question whether they were justified in taking $100,000 out of the public chest, in addition to the millions they had previously taken, without the consent of Parliament; so, having either to give up their seats or evade that particular issue, they abandoned all their previous opinions, and joined the honourable member for South Oxford in carrying out this Confederation scheme.

I come now to another point, viz., is the scheme presented to us the same one that was promised to us by the Administration when it was formed? This, sir, might be but of slight importance if the manner in which this proposed Constitution was framed had not a most unfortunate bearing on the scheme itself; but it is a grave matter, since the scheme is so objectionable, especially as we are gravely told that it cannot be amended in the least, but that it is brought down as a compact made between the Government of this country and delegates from the governments of Nova Scotia, New Brunswick, Newfoundland, and Prince Edward Island—as a treaty which cannot be altered or amended in any particular. The plain meaning of this is, sir, that the Lower Provinces have made out a Constitution for us, and we are to adopt it. This fact will appear the more clearly when it is considered, as was pointed out, much to my surprise, by the honourable member for Hastings (Mr. T. C. Wallbridge), that in the Conference the vote was taken by provinces, putting Upper and Lower Canada, with nearly 2,500,000 people, on no

Digitized by Google

higher level than Prince Edward Island, with its 80,000 —on the same level with New Brunswick, with its 250,000 —on the same level as Nova Scotia, with its 330,000. . . . In order to show, Mr. Speaker, that I am not mistaken in what I state, that this scheme is not the one which it was announced in the formation of this Administration was to be brought down—in order to prove, indeed, that it was then determined not to bring down such a measure, —I will cite a declaration made by members of the Government as to the negotiations which took place at its formation. I will read from the Quebec *Morning Chronicle* of June 23rd :—

The Hon. Attorney-General *Macdonald*, in explaining the negotiations read the following memorandum :

Memorandum.—Confidential.

The Government are prepared to state that immediately after the prorogation, they will address themselves, in the most earnest manner, to the negotiation for a Confederation of all the British North American Provinces.

That failing a successful issue to such negotiations, they are prepared to pledge themselves to legislation during the next Session of Parliament for the purpose of remedying the existing difficulties by introducing the Federal principle for Canada alone, coupled with such provisions as will permit the Maritime Provinces and the North-Western Territory to be hereafter incorporated into the Canadian system.

That for the purpose of carrying on the negotiations and settling the details of the promised legislation, a Royal Commission shall be issued, composed of three members of the Government and three members of the Opposition, of whom Mr. Brown shall be one, and the Government pledge themselves to give all the influence of the Administration to secure to the said Commission the means of advancing the great object in view.

This was the first memorandum communicated to the member for South Oxford, but that honourable member did not accept it. This memorandum proposed the scheme which is now brought to the House, and I repeat, that scheme was not accepted by the honourable member for South Oxford, but an understanding was come to, which is to be found in the next memorandum, which was communicated to the House in these terms :—

The Government are prepared to pledge themselves to bring in a measure next session for the purpose of removing existing difficulties, by introducing the Federal principle into Canada, coupled with such provisions as will permit the Maritime Provinces and the North-West Territory to be incorporated into the same system of government.

Digitized by Google

And the Government will seek, by sending representatives to the Lower Provinces and to England, to secure the assent of those interests which are beyond the control of our own legislation to such a measure as will enable all British North America to be united under a General Legislature based upon the Federal system.

There is a vast difference, Mr. Speaker, between these two propositions. The first was that the Government would pledge themselves to seek a Confederation of the British American Provinces, and if they failed in that to federate the two Canadas, and this was rejected; the second, which was accepted by the President of the Council, pledged the Government to bring in a measure for the Confederation of the two Canadas, with provision for the admission of the other provinces when they thought proper to enter.

But, sir, I may be asked, granting all this, granting that the scheme brought down is not the scheme promised to us, what difference our bringing in the provinces at once can make? This I will endeavour to explain. When they went into the Conference, honourable gentlemen opposite submitted to have the votes taken by provinces. Well, they have now brought us in, as was natural under the circumstances, the most conservative measure ever laid before a Parliament. The members of the Upper House are no longer to be elected, but nominated, and nominated by whom? By a Tory or Conservative Government for Canada, by a Conservative Government in Nova Scotia, by a Conservative Government in Prince Edward Island, by a Conservative Government in Newfoundland, the only Liberal Government concerned in the nomination being that which is controlled by the liberal party in New Brunswick, whose fate depends on the result of the elections that are now going on in that province. Such a scheme would never have been adopted if submitted to the liberal people of Upper Canada. When the Government went into that Conference they were bound by the majority, especially since they voted by provinces, and the 1,400,000 of Upper Canada with the 1,100,000 of Lower Canada—together 2,500,000 people—were overridden by 900,000 people of the Maritime Provinces. Were we not expressly told that it was the Lower Provinces who would not hear of our having an elective Legislative Council? If, instead of going into Conference

Digitized by Google

with the people of the Lower Provinces, our Government had done what they pledged themselves to do, that is, to prepare a Constitution themselves, they would never have dared to bring in such a proposition as this which is now imposed upon us by the Lower Colonies—to have a Legislative Council, with a fixed number of members, nominated by four Tory governments. Why, taking the average time each councillor will be in the Council to be fifteen to twenty years, it will take a century before its complexion can be changed. For all time to come, so far as this generation and the next are concerned, you will find the Legislative Council controlled by the influence of the present Government. And is it to be believed that, as promised in the document we are considering, such a Government as we have "will take care of the Opposition, or consider their right to be represented in the Council"? Sir, I thank the delegates for their kind solicitude for the Opposition, but I do not believe they will do anything of the kind. Have we not heard the Hon. Attorney-General West, a few nights ago, state, turning to his followers, "If I were to advise the nomination, I should advise the selection of the best men I could find—and of course of my own party"? . . .

How long will the system work without producing a collision between the two branches of the Legislature? Suppose the Lower House turns out to be chiefly liberal, how long will it submit to the Upper House, named by conservative administrations which have taken advantage of their temporary numerical strength to bring about such a change as is now proposed? Remember, sir, that, after all, the power, the influence of the popular branch of the Legislature is paramount. We have seen constitutions like that of England adopted in many countries, and where there existed a nobility, such as in France in 1830, the second chamber was selected from this nobility. In Belgium, where the Constitution is almost a facsimile of that of England, but where there are no aristocracy, they adopted the elective principle for the Upper House, and nowhere in the world is there a fixed number for it, unless it is also elective. It must be fresh in the memory of a great many members of this House how long the House of Lords resisted the popular demand for reform, and great difficulties were threatened. At last in 1832 the agitation had become so great that

Digitized by Google

the Government determined to nominate a sufficient number of peers to secure the passage of the Reform Bill. The members of the House had to choose between allowing the measure to become law, or seeing their influence destroyed by the addition of an indefinite number of members. They preferred the first alternative, and thereby quieted an excitement, which if not checked in time, might have created a revolution in England. The influence of the Crown was then exerted in accordance with the views of the people; but here we are to have no such power existing to check the action of our Upper Chamber, and no change can be made in its composition except as death might slowly remove its members. I venture to prophesy, sir, that before a very short time has elapsed a dead-lock may arise, and such an excitement be created as has never yet been seen in this country. Now, if this Constitution had been framed by the members of our Government, we could change some of its provisions — this provision would most certainly be altered—there is not a man in the Liberal ranks who dare vote for such a proposition as this, that could go before his constituents and say, "I have taken away the influence and control of the people over the Upper Chamber, and I have created an entirely independent body, to be chosen by the present governments of the several provinces." But no, the Constitution is in the nature of a compact, a treaty, and cannot be changed. But, sir, the composition of the Legislative Council becomes of more importance when we consider that the governors of the local legislatures are to be appointed by the General Government, as well as the Legislative Council; their appointment is to be for five years, and they are not to be removed without cause. I will venture upon another prediction, and say we shall find there will be no such thing as responsible government attached to the local legislatures. There will be two, three, or four ministers chosen by the lieutenant-governors, who will conduct the administration of the country, as was formerly done in the times of Sir Francis Bond Head, Sir John Colborne, or Sir James Craig. You will have governments, the chief executives of which will be appointed and hold office at the will of the Governor. If that is not to be the case, why do not honourable gentlemen lay their scheme before us? Is this House, sir, going to vote

Digitized by Google

a Constitution with the Upper House as proposed, without knowing what sort of local legislatures we are to have to govern us ? Suppose, after we have adopted the main scheme, the Government come down with a plan for settling the local legislatures upon which great differences of opinion will arise, may it not happen then that the majority from Lower Canada will unite with a minority from Upper Canada and impose upon that section a local Constitution distasteful to a large majority of the people of Upper Canada ? The whole scheme, sir, is absurd from beginning to end. It is but natural that gentlemen with the views of honourable gentlemen opposite want to keep as much power as possible in the hands of the Government — that is the doctrine of the conservative party everywhere—that is the line which distinguishes the tories from the whigs—the tories always side with the Crown, and the liberals always want to give more power and influence to the people. The instincts of honourable gentlemen opposite, whether you take the Hon. Attorney-General East or the Hon. Attorney-General West, lead them to this—they think the hands of the Crown should be strengthened and the influence of the people, if possible, diminished—and this Constitution is a specimen of their handiwork, with a Governor-General appointed by the Crown ; with local governors also, appointed by the Crown ; with legislative councils, in the General Legislature, and in all the provinces, nominated by the Crown ; we shall have the most illiberal Constitution ever heard of in any country where constitutional government prevails. The Speaker of the Legislative Council is also to be appointed by the Crown; this is another step backwards, and a little piece of patronage for the Government. We have heard in a speech lately delivered in Prince Edward Island or New Brunswick, I forget which, of the allurements offered to the delegates while here in the shape of prospective appointments as judges of the Court of Appeal, Speaker of the Legislative Council, and local governors, as one of the reasons assigned for the great unanimity which prevailed in the Conference. . . .

I now come to another point. It is said that this Confederation is necessary for the purpose of providing a better mode of defence for this country. There may be people who think that by adding two and two together you make five. I am not of that opinion. I cannot see

Digitized by Google

how by adding the 700,000 or 800,000 people, the inhabitants of the Lower Provinces, to the 2,500,000 inhabitants of Canada, you can multiply them so as to make a much larger force to defend the country than you have at present. Of course the connection with the British Empire is the link of communication by which the whole force of the Empire can be brought together for defence. But the position of this country under the proposed scheme is very evident. You add to the frontier four or five hundred more miles than you now have, and an extent of country immeasurably greater in proportion than the additional population you have gained; and if there is an advantage at all for the defence of the country, it will be on the part of the Lower Provinces and not for us. And as we find that we are about to enter into a very large expenditure for this purpose of defence — this having been formally announced in a speech delivered by the President of the Council at Toronto— and as Canada is to contribute to that expenditure to the extent of ten-twelfths of the whole, the other provinces paying only two-twelfths, it follows that Canada will pay ten-twelfths also of the cost of defence, which, to defend the largely extended country we will have to defend, will be much larger than if we remained alone. . . . It appears then that our course is to put "the military and naval defences" into "a most complete and satisfactory condition." Now I find that, according to these resolutions, the General Government is to have control of "the military and naval defences," but, of course, the cost of them is not stated. This I contend, then, that if the military and naval defences of all the provinces are to be provided for by the General Government, and if you have to increase the militia for this purpose, the Lower Provinces will pay only their proportion of two-twelfths, and Canada, while obtaining no greater defensive force than at present, will have to pay five times as much as we are now paying. Why, sir, take the line dividing New Brunswick from Maine and you find it separates on the one side 250,000, thinly scattered over a vast territory, from 750,000 on the other, compact and powerful. These 250,000 Canada will have to defend, and it will have to pledge its resources for the purpose of providing means of defence along that extended line. And, if rumour be true, the Intercolonial Railway, this

Digitized by Google

so-called great defensive work, is not to pass along Major Robinson's line. The statement has been made—I have seen it in newspapers usually well informed—that a new route has been found that will satisfy everybody or nobody at all; and while I am on this point I must say that it is most singular that we are called upon to vote these resolutions, and to pledge ourselves to pay ten-twelfths of the cost of that railway, without knowing whether there will be ten miles or one hundred miles of it in Lower Canada, or whether it will cost $10,000,000 or $20,000,000. . . . We have heard for some time past that the engineer, Mr. Fleming, is prepared to make his report. Why is it not forthcoming?—why has it been kept back? The representatives of the people in this House will show an utter disregard of their duty if they do not insist upon having that report, and full explanations respecting the undertaking, as well as the scheme for the constitution of the local governments, before they vote upon the resolutions before the House. It is folly to suppose that this Intercolonial Railway will in the least degree be conducive to the defence of the country.[1] We have expended a large sum of money—and none voted it more cordially and heartily than myself—for the purpose of opening a military highway from Gaspé to Rimouski; and that road, in case of hostilities with our neighbours, would be found of far greater service for the transport of troops, cannon and all kinds of munitions of war, than any railway following the same or a more southern route possibly can be. That road cannot be effectually destroyed; but a railway lying in some places not more than fifteen or twenty miles from the frontier, will be of no use whatever, because of the readiness with which it may be attacked and seized. An enemy could destroy miles of it before it would be possible to resist him, and in time of difficulty it would be a mere trap for the troops passing along it, unless we had almost an army

[1] Brown and Dorion had been personal friends and political allies for years, but on the question of Federation the political alliance was broken. As to the Intercolonial Railway, Brown said: "The Intercolonial Railway will give us at all times access to the Atlantic through British territory. As a commercial enterprise it has not, I apprehend, any considerable merit; as a work of defence it has, however, many advocates: but if the union of the provinces is to go on, it is an absolute necessity; and as the price of union, were there no other argument in its favour, I heartily go for it."

Digitized by Google

to keep it open. Upon this question of defence, we have heard so much during the past two or three years that I think it is time now we should have some plain explanations about it. We heard the other day from the honourable member for West Montreal[1]—and I am always glad to quote him, he is usually so correct—that in less than a year the American army, the army of the Northern States, was increased from 9,000 to 800,000 men ready for service, and that in less than four years they were able to put to sea a fleet which, in point of numbers—I do not say in armament or value—was equal to the entire naval force of England. Well, the honourable gentleman might have gone further and shown that within a period of four years the Northern States have called into the field 2,300,000 men—as many armed men as we have men, women and children in the two Canadas—and that we hear every day of more being raised and equipped. It is stated that, in view of these facts, it is incumbent upon us to place ourselves in a state of defence. Sir, I say it here candidly and honestly, that we are bound to do everything we can to protect the country, but we are not bound to ruin ourselves in anticipation of a supposed invasion which we could not repel, even with the assistance of England. The battles of Canada cannot be fought on the frontier, but on the high seas and at the great cities on the Atlantic coast; and it will be nothing but folly for us to cripple ourselves by spending fifteen or twenty millions a year to raise an army of 50,000 men for the purpose of resisting an invasion of the country. The best thing that Canada can do is to keep quiet, and to give no cause for war. Let the public opinion of this country compel the press to cease the attacks it is every day making upon the Government and people of the United States; and then if war does come between England and the States—even if from no fault of ours—we will cast in our lot with England and help her to fight the battle; but in the meantime it is no use whatever to raise or keep up anything like a standing army. . . . The honourable member for Peterborough[2] stated the other day, and correctly I believe, that the place for our militia was behind the fortifications of our fortified places, where they would count for something and would be of

[1] The Hon. T. D'Arcy McGee. [2] The Hon. F. W. Haultain.

Digitized by Google

some use. No doubt of this. Why, sir, it is absurd to speak of defending this country with such a force as we could maintain when we have the recent example before our eyes of a country in Europe possessing as large a defensive force, literally wiped off the map by an invading army of some 75,000 or 80,000 men. The kingdom of Denmark consists now of only two small islands—less by far, in extent, than one of our large counties; and this dismemberment has been forced upon it, although it had a standing army of 30,000 men, and the feeling of the whole population was in favour of the war. I do not use this argument for the purpose of showing that something ought not to be done respecting our militia. I am willing that we should make sacrifices, if necessary, for the purpose of organizing it thoroughly; but I am decidedly opposed to a standing army, and do not believe we could raise an army now that would be able to withstand the force that could be sent against it. We have sent to the frontier 2,000 men, whose services for a year will cost us $1,500,000; and at the same rate of expenditure, 50,000 men would cost us over thirty millions of money. Now, if the whole defence of the country is to rest upon us, I ask again what would such a force amount to?

Now, sir, when I look into the provisions of this scheme, I find another most objectionable one. It is that which gives the General Government control over all the acts of the local legislatures. What difficulties may not arise under this system? Now, knowing that the General Government will be party in its character, may it not for party purposes reject laws passed by the local legislatures and demanded by a majority of the people of that locality? This power conferred upon the general Government has been compared to the veto power that exists in England in respect to our legislation; but we know that the statesmen of England are not actuated by the local feelings and prejudices, and do not partake of the local jealousies, that prevail in the colonies. The local governments have therefore confidence in them, and respect for their decisions; and generally, when a law adopted by a colonial legislature is sent to them, if it does not clash with the policy of the Empire at large, it is not disallowed, and more especially of late has it been the

Digitized by Google

policy of the Imperial Government to do whatever the colonies desire in this respect, when their wishes are constitutionally expressed. The axiom on which they seem to act is that the less they hear of the colonies the better. But how different will be the result in this case, when the General Government exercises the veto power over the acts of local legislatures. Do you not see that it is quite possible for a majority in a local government to be opposed to the General Government; and that in such a case the minority would call upon the General Government to disallow the laws enacted by the majority? The men who will compose the General Government will be dependent for their support upon their political friends in the local legislatures, and it may so happen that, in order to secure this support, or in order to serve their own purposes or that of their supporters, they will veto laws which the majority of a local legislature find necessary and good. We know how high party feeling runs sometimes upon local matters even of trivial importance, and we may find parties so hotly opposed to each other in the local legislatures, that the whole power of the minority may be brought to bear upon their friends who have a majority in the General Legislature, for the purpose of preventing the passage of some law objectionable to them but desired by the majority of their own section. What will be the result of such a state of things but bitterness of feeling, strong political acrimony and dangerous agitation? . . .

But, sir, respecting the defences of the country, I should have said at an earlier stage of my remarks that this scheme proposes a union not only with Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland, but also with British Columbia and Vancouver's Island. Although I have not been able to get the information from the Government—for they do not seem to be very ready to give information—yet I understand that there are despatches to hand, stating that resolutions have been adopted in the Legislature of British Columbia asking for admission into the Confederation at once. I must confess, Mr. Speaker, that it looks like a burlesque to speak as a means of defence of a scheme of Confederation to unite the whole country extending from Newfoundland to Vancouver's Island, thousands of miles intervening without any communica-

Digitized by Google

tion, except through the United States or around Cape Horn.

Hon. Attorney-General Cartier: There is an Inter-oceanic Railway to be built.

Hon. Mr. Dorion: Yes, I suppose that is another necessity of Confederation, to which we may soon look forward. Some western extension of this Grand Trunk scheme for the benefit of Messrs. Watkin and Company, of the new Hudson's Bay Company.

So far as Lower Canada is concerned, I need hardly stop to point out the objections to the scheme. It is evident, from what has transpired, that it is intended eventually to form a legislative union of all the provinces. The local governments, in addition to the General Government, will be found so burdensome, that a majority of the people will appeal to the Imperial Government for the formation of a legislative union. I may well ask if there is any member from Lower Canada, of French extraction, who is ready to vote for a legislative union. What do I find in connection with the agitation of this scheme? The honourable member for Sherbrooke (Mr. Galt) stated at the dinner to the delegates given at Toronto, after endorsing everything that had been said by the Hon. President of the Council :—

> We may hope that, at no far distant day, we may become willing to enter into a legislative union instead of a federal union, as now proposed. We would all have desired a legislative union, and to see the power concentrated in the Central Government as it exists in England, spreading the ægis of its protection over all the institutions of the land, but we found it was impossible to do that at first. We found that there were difficulties in the way which could not be overcome.

Honourable members from Lower Canada are made aware that the delegates all desired a legislative union, but it could not be accomplished at once. This Confederation is the first necessary step towards it. The British Government is ready to grant a Federal union at once, and when that is accomplished the French element will be completely overwhelmed by the majority of British representatives. What then would prevent the Federal Government from passing a set of resolutions in a similar way to those we are called upon to pass, without submitting them to the people, calling upon the Imperial Government to set aside the Federal form of government

Digitized by Google

and give a legislative union instead of it? Perhaps the people of Upper Canada think a legislative union a most desirable thing. I can tell those gentlemen that the people of Lower Canada are attached to their institutions in a manner that defies any attempt to change them in that way. They will not change their religious institutions, their laws and their language, for any consideration whatever. A million of inhabitants may seem a small affair to the mind of a philosopher who sits down to write out a constitution. He may think it would be better that there should be but one religion, one language and one system of laws, and he goes to work to frame institutions that will bring all to that desirable state; but I can tell honourable gentlemen that the history of every country goes to show that not even by the power of the sword can such changes be accomplished. We have the history of the Greek race, having at one time a population of six millions, dwindling down to seven hundred thousand, and we find them even then, after several centuries of oppression, rising up and asserting their rights. We have the same circumstance in the history of Belgium, which was united to Holland with a view to secure the assimilation of the two countries, but fifteen years of trial had hardly elapsed when the whole of the Belgium people and Government rose *en masse* to protest against that union, and to assert their separate nationality. Sir, it is not only from the history of the past we may derive the lesson, but we have the circumstances of the present generation to guide us. I am astonished to see the honourable member for Montreal West helping a scheme designed to end in a legislative union, the object of which can only be to assimilate the whole people to the dominant population. In that honourable gentleman's own country the system has produced nothing but a dissatisfied and rebellious people. Is it desirable that in this country then we should pass a measure calculated to give dissatisfaction to a million of people? You may ascertain what the cost of keeping down a million of dissatisfied people is by the scenes that have been and are now transpiring on the other side of the line, where a fifth of the people of the United States has risen and has caused more misery and misfortune to be heaped upon that country than could have been wrought in centuries of peaceful compromising legislation. Sir, if

Digitized by Google

a legislative union of the British American Provinces is attempted, there will be such an agitation in this portion of the province as was never witnessed before—you will see the whole people of Lower Canada clinging together to resist by all legal and constitutional means such an attempt at wresting from them those institutions that they now enjoy. They would go as a body to the Legislature, voting as one man, and caring for nothing else but for the protection of their beloved institutions and law, and making government all but impossible. The ninety Irish members in the British House of Commons, composed as it is of nearly seven hundred members, by voting together have caused their influence to be felt, as in the grants to the Maynooth College and some other questions. It would be the same way with the people of Lower Canada, and a more deplorable state of things would be the inevitable result. The majority would be forced by the minority to do things they would not, under the circumstances, think of doing. This is a state so undesirable that, although I am strongly opposed to the proposed Federal union, I am still more strongly opposed to a legislative union. Those who desire a legislative union may see from this what discordant elements they would have to deal with in undertaking the task, and what misery they would bring upon the country by such a step. I know there is an apprehension among the British population in Lower Canada that, with even the small power that the Local Government will possess, their rights will not be respected. How, then, can it be expected that the French population can anticipate any more favourable result from the General Government, when it is to possess such enormous powers over the destinies of their section of the country? Experience shows that majorities are always aggressive, and it cannot well be otherwise in this instance. It therefore need not be wondered at that the people of Lower Canada, of British origin, are ready to make use of every means to prevent their being placed at the mercy of a preponderating population of a different origin. I agree with them in thinking that they ought to take nothing on trust in this matter of entering upon a new state of political existence, and neither ought we of French origin to do so, in relation to the General Government, however happy our relations to each other may be at present. . . .

Digitized by Google

Hon. Solicitor-General Langevin: The honourable member for Hochelaga told us the other day that the plan of a Confederation was adopted and moved by the present Administration for the mere purpose of stifling the cry of representation by population. Well, and if it really were so, where does the honourable member find the harm in it? Is it not most important that we should stop that cry for representation based on population, in our present condition? Representation by population would have left us Lower Canadians in an inferior position relatively to that of Upper Canada—would have conferred on the latter the privilege of legislating for us, not only in general, but in local matters. The honourable member for Hochelaga ought to have been the last to reproach the present Government with having, by this measure of Confederation, stopped the cry for representation based on population. In 1854, the honourable member admitted, as he himself acknowledges, that representation based on population was just in principle, and the consequence of that admission was fatal. The consequence was that the honourable member was compelled to keep in the same track until the formation of the Brown-Dorion Administration in 1858—an Administration which had no very long existence. . . . The question of representation based on population must be met; that question must be settled. To say that we will grant it is to wish to place us in a position of inferiority, and I, for my part, will never consent to place my section of the province in that position.

Then there is another alternative that is proposed—annexation to the United States. I do not believe there is a single member in the House or out of the House who would consent to that. But it is a question which must be examined when discussing that of Confederation, because it is one of the alternatives offered to us, and out of which we have to make a selection. . . . What would be the fate of the French-Canadians in the case of annexation to the United States? Let us profit by the example of the French race in the United States, and enquire what has been the fate of the French in Louisiana? What has become of them? What has become of their language, their customs, their manners and their institutions? After the war, hardly a trace will remain to show that the French race has passed that way. So

Digitized by Google

far as religion is concerned, we might not find ourselves so badly off; but we live in peace at the present day and are perfectly comfortable; Catholics and Protestants have the same rights and religious liberty, and they live as peacefully together as if there was but one religion in the land.[1]

Hon. Christopher Dunkin:[2] I am bound to repeat at the outset, that no one can do justice to a question like this, and start with the idea of at all ignoring details. Here is a measure proposed for our acceptance, embodied in seventy-two resolutions, resolutions which affirm a great many more than seventy-two propositions, connected with almost every principle known to have reference to the theory and practice of popular government. I say it is a scheme which is as complex and as vast as one can well imagine, and declamation about first principles can be of no real use in its discussion—can avail only to mislead in reference to it. We have to deal with no mere abstract question of a nationality, or of union or disunion, or of a federal as opposed to a legislative union. It is idle to talk vaguely about the maintenance of British connection, or to go into magnificent speculations about the probable results of independence, or blindly to urge this scheme as a sure preventative of annexation to the United States. These cheap and easy generalities are thoroughly unreliable. The only question is, How is this plan, in its entirety, going to work? And this question is one which is not easy to answer; it is one requiring much patience, and a close examination of details. I may further take leave to say at starting, that I do not approach this question from any new point of view whatever. Always I have been, and now I am, a unionist in the strictest and largest sense of the term. I desire to perpetuate the union between Upper and Lower Canada. I desire to see developed the largest

[1] Similarly, Sir E. P. Taché said: "If a Federal Union were obtained, it would be tantamount to a separation of the provinces, and Lower Canada would thereby preserve its autonomy, with all the institutions which it held so dear, and over which they could exercise the watchfulness and surveillance necessary to preserve them unimpaired." This he repeated in French, in order to make sure that the point might be fully grasped by all his audience.

[2] Mr. Christopher Dunkin was at this time member for the county of Brome, in Lower Canada. His speech lasted for two sittings, and in the printed report occupies sixty-two pages, or about 47,000 words.

Digitized by Google

union that can possibly be developed (I care not by what name you call it) between all the colonies, provinces, and dependencies of the British Crown. I desire to maintain that intimate union which ought to subsist, but which unfortunately does not subsist as it ought, between the Imperial Government and all those dependencies. I am a unionist, who especially does not desire to see the provinces of Upper and Lower Canada disunited. To my mind, this scheme does not at all present itself as one of union; and if honourable gentlemen opposite will admit the truth, they will acknowledge that, practically, it amounts to a disunion between Upper and Lower Canada. I confess that I am irreconcilably opposed to that portion of the scheme. I repeat I do not care to see Upper and Lower Canada more dissevered than they are; on the contrary, I wish to see them brought into closer union; and far from regarding this scheme as cementing more closely the connection of these provinces with the British Empire, I look upon it as tending rather towards a not distant disunion of these provinces from the British Empire. . . .

If I could be astonished at anything in politics, Mr. Speaker, I should be astonished at the attempt which has been made by some honourable gentlemen on the Treasury benches to represent the state of the public feeling on this subject as not having that mere sudden, sensational, unreliable character which I have ascribed to it. Long forgotten expressions of individual opinion; clauses said to have formed part of bills not to be found, and not known to have been even drawn; motions threatened but never made, the small party fencings of past times, from before the days of the Canada Trade Act downwards, have been pressed into service to meet the exigencies of a hard case. Well, I shall not follow out that line of argument: it is not worth while. We all know that, from the time of the union of Canada, at all events until very lately indeed, nothing like serious discussions of the propriety or impropriety of a Federal union, or of any union at all, of the aggregate of these British American Provinces, has ever so little occupied the public mind. . . .

It can hardly be denied, Mr. Speaker, that there is a good deal of practical objection to the plan of shifting representation districts, which is what this

Digitized by Google

system adopts, and what the system of the United States adopted. Every ten years the representation from each province in the House of Commons is to be changed or readjusted by a rule which, for all practical purposes, is essentially the same as that of the United States. Of course we have not the little addition of the allowance for the three-fifths of the slave population which they have; but decennially we are to take the population of the several provinces, and by a rule in all essentials common to the two systems, we are to declare how many representation districts are to be allowed to each province. Now, the result of that system must be that we can have no lasting constituencies for the future House of Commons. These representation districts cannot be kept to correspond with our municipal, business or registration districts, or with our districts for representation in our provincial legislatures. We are to have a set of special, shifting districts for the mere purpose of electing our Federal House of Commons. I must say that this principle is not, from a British point of view, a sound one. What we ought to do is, to try to establish in this country of ours a set of representation districts as permanent and as closely coinciding with our territorial divisions existing for other purposes, as circumstances will allow us to have them; subdividing or otherwise altering them, or erecting new ones, only as occasion may be found to require.

Hon. Attorney-General Cartier: We will do that for the local parliaments.

Mr. Dunkin: Perhaps so, and perhaps not. That distinction, however, is just what I complain of. We are to change our districts for purposes of representation in the local parliaments, if we like, but not unless we like. These subdivisions of our provinces may thus, in the main, be permanent. But for representation in the Federal Parliament we are, at each of these decennial periods, to have a general readjustment of the whole country, so as to divide each province anew into its due number of aliquot parts. This is an innovation on our usages, greatly for the worse. It goes to destroy that character of reality, convenience and stability which—if our system, as a whole, is to have such a character—had need be maintained to the utmost extent practicable, in respect of our constituencies and of our minor terri-

Digitized by Google

torial delimitations generally. This changing every ten years brings together electors who have not been in the habit of acting with each other. In England they do nothing of this sort; they do not change their limits lightly. The several bodies of men who send representatives to the Imperial House of Commons have the habit of so coming together, as bodies not likely to be broken up. We ought to keep this as an element of our Constitution, but it is carefully eliminated from it. . . . For all legislative purposes, we must look to have all our territorial divisions open to frequent, one might say perpetual, reconstruction; and this subject perpetually to the disturbing influences of the party warfare of the hour. The exigencies of that warfare, we may be sure, will tell; and whatever the party in the ascendant, whether in the country at large or locally, will find means in this part of our machinery for advancing its ends—means not quite of the sort to commend themselves to one's approval. . . .

In the United States, as is admitted, the Senate does a certain part of what we undertake here to do by means of a Cabinet. The Federal check so exercised by the Senate renders unnecessary, for any Federal purposes, the existence of a Cabinet. Indeed they do not want a Cabinet for any purpose at all. It is not of their system. But here, with our chief magistrate not elected, we must have one. And yet, how are we to make it work, engrafted on a system which, in its essentials, is after all more American than British? This is what I have now come to. I have to ask honourable gentlemen opposite how they are going to organize their Cabinet, for these provinces, according to this so-called Federal scheme? I think I may defy them to show that the Cabinet can be formed on any other principle than that of a representation of the several provinces in that Cabinet. It is admitted that the provinces are not really represented to any Federal intent in the Legislative Council. The Cabinet here must discharge all that kind of function, which in the United States is performed, in the Federal sense, by the Senate. And precisely as in the United States, wherever a Federal check is needed, the Senate has to do Federal duty as an integral part of the Executive Government, so here, when that check cannot be so got, we must seek such

Digitized by Google

substitute for it as we may, in a Federal composition of the Executive Council; that is to say, by making it distinctly representative of the provinces. Well, I must say that this sort of thing is utterly variant from, and inconsistent with British practice and British principle; with the constitutional system which makes the whole Cabinet responsible for every act of government. The British Cabinet is no Cabinet of sections, but a unit. . . . But now, if this Executive Council is to have in it, as I am sure it must have, in order to work at all, a representation of the different provinces, all or nearly all of them, let us look for a moment at what will have to be its number. There are two ways of calculating this—two sets of *data* on which to go. Either we must go upon what I may call the wants of the component parts, or we may start from the wants of the country as a whole. Suppose, then, we start from the wants of the different provinces. I take it that no section of the Confederation can well have less than one representative in the Cabinet. Prince Edward Island will want one; Newfoundland, one. A difficulty presents itself with regard to Lower Canada. On just the same principle upon which Lower Canada wants, for Federal ends, to have a proper representation in the Executive Council, on that same principle the minority populations in Lower Canada will each want, and reasonably want, the same thing. We have three populations in Lower Canada—the French-Canadians, the Irish Catholics, and the British Protestants. In other words, there are the Catholics and the non-Catholics, and the English-speaking and the non-English-speaking, and these two cross-lines of division cut our people into the three divisions I have just indicated. Well, if in a government of this Federal kind the different populations of Lower Canada are to feel that justice is done them, none of them can be there ignored. The consequences of ignoring them might not be very comfortable. Heretofore, according to general usage, the normal amount of representation for Lower Canada in the Executive Council has been six seats out of twelve. Of those, four may be said legitimately to belong to the French-Canadians, one to the Irish Catholics, and one to the British Protestant class. Everyone is satisfied that that is about the fairest thing that can be done. There have been times when these proportions have varied.

Digitized by Google

There have been exceptional times when the British Protestant population has had to put up with a Solicitor-General out of the Cabinet, and has done so with no very loud complaint. There has never been a time, I think, when there was not an Irish Catholic in the Cabinet. There have been times when the number of French-Canadians has been less than four, and there was then much complaint. Six members—four, one and one—are just about what you must give to please each section of Lower Canada. Well, sir, if there are to be six for Lower Canada, there must be six or seven for Upper Canada, and you cannot very well leave less than three each for Nova Scotia and New Brunswick, and, as I have said, one each for Newfoundland and Prince Edward Island; and thus you have an Executive Council of twenty or twenty-one members, besides all we might have to add for other provinces; and this, I rather think, is a little too many. The thing could not be done; for so large a Cabinet could never work. Suppose then, on the other hand, that we start with the idea of limiting the number of our Executive Council to meet what I may call the exigencies of the country as a whole. Eleven, twelve or thirteen—the latter, as an honourable member observes, is an unlucky number—will be as many as we can possibly allow. Of this number one, as before, will be wanted for Newfoundland and one for Prince Edward Island. If one is wanted for each of the little provinces, New Brunswick and Nova Scotia will be sorely discontented unless they get, at least, two apiece; and neither Lower Canada nor Upper Canada will be contented with the three left for each of them. And for Lower Canada, in particular, how will anyone divide this intractable figure between her French, Irish and British? Shall we give them one apiece, and ask the French-Canadian element to be content with one voice in a cabinet of a dozen? — or, give that element two, without satisfying it—so leaving out either the Irish or the British, to its intense disgust?— or give the preponderating element the whole, to the intense disgust of both the others? It will be none too easy a task, sir, I think, to form an Executive Council with its three members for Lower Canada, and satisfy the somewhat pressing exigencies of her creeds and races. . . .

Let me take another feature of the scheme, or, I might

Digitized by Google

say, one absence of a feature from the scheme — the non-provision of anything like provincial constitutions. We are not told about them; they are kept back completely in the dark; it is part of the scheme that we are not to know what it means them to be. It is part of the scheme, too, from all appearance, that they may not be at all alike. For anything I can see, Nova Scotia will have a right under this scheme to devise a system of responsible government, with a cabinet and two branches of the legislature. New Brunswick, if it pleases, may have only one legislative body, with or without responsible government. So may the Prince Edward Island people have anything they like; and the people of Newfoundland may do what they like, and so may we in Canada. Lower Canada may even have a constitution of one kind, and Upper Canada one of a totally different kind. There may be no two of our six or more local constitutions framed on the same model. It seems to be meant that these constitutions shall be as varied as the people of the different provinces may see fit to make them; nay, there are even left to the people of the different provinces the same large powers for amending them afterwards. To be sure there is the grand power of disallowance by the Federal Government, which we are told, in one and the same breath, is to be possessed by it, but never exercised.

Hon. Attorney-General Cartier: The presumption is, it will be exercised in case of unjust or unwise legislation.

Mr. Dunkin: The hon. gentleman's presumption reminds me of one, perhaps as conclusive, but which Dickens tells us failed to satisfy his Mr. Bumble. That henpecked beadle is said to have said, on hearing of the legal presumption that a man's wife acts under his control: "If the law presumes anything of the sort, the law's a fool—a natural fool!" If this permission of disallowance rests on a presumption that the legislation of our provinces is going to be unjust or unwise, it may be needed; but under that idea, one might have done better either not to allow, or else to restrict within narrower limits, such legislation. If the promised non-exercise of the power to disallow rests on a presumption that all will be done justly and wisely in the provincial legislatures, the legislative power is well given; but then there is no need, on the other hand, for the permission

Digitized by Google

to disallow. I repeat, this system, or no-system, aims at nothing like uniformity between the general and local constitutions, or between the local constitutions themselves; and in this respect, it is essentially at variance with the much wiser system adopted in the United States. It further allows of no real autonomy; in fact, the only trace of uniformity it can be said to have about it, consists in its disallowance of all autonomy to the provinces.

Now, let me take up those few features that undoubtedly are given to us, as characterizing our provincial system. Wide as we have seen the latitude is which the provinces may take in framing their constitutions, there are a few matters as to which the system lays down an iron rule. There is the appointment of a lieutenant-governor which is to be vested in the General Government. It is not said in so many words that he is to be a colonist, but I think it may be taken for granted that he will be. It is not very likely that we shall get any right honourable gentleman or eminent statesman, from home, to come out here for an appointment of that kind; and I take for granted, therefore, that the General Government will always nominate Mr. Somebody or other, of local distinction, to this office of lieutenant-governor. . . . Suppose any of our politicians, whether of this province or of any other in the Confederacy, say Canada, Newfoundland or Nova Scotia, to be assuming this *rôle* of lieutenant-governor in any of our provinces. He has this disadvantage to begin with; he has to that moment been passing through that ordeal of abuse under which every prominent public man in this country must have suffered before attaining any distinction whatever. No matter over what colony appointed, or from what colony coming, a lieutenant-governor will have hard cards to play, and will have very much to put up with from the people over whom he is set, on this mere score of his past political exploits. He has been known as a politician, and will be held to be favourable or unfavourable to this party or that in the province he governs.

But how do we stand here, Mr. Speaker, as to the attributes of our own provincial legislatures and governments, on the one hand, and those of the Federal power on the other? Do we follow American example, and give so much to the union and the rest to the provinces;

Digitized by Google

or so much to them, and the rest to it? Either rule would be plain; but this plan follows neither. It simply gives us a sort of special list for each; making much common to both, and as to much more, not showing what belongs to either. I cannot go now into detail on this head. I can give no more than some few specimens; and I take first the three subjects of the fisheries, agriculture, and immigration. These three subjects are equally assigned to the General Legislature on the one hand, and the Provincial Legislature on the other. It is provided by the 45th resolution, that in all such cases, wherever any statutes of the general and local parliaments clash, those of the General Parliament shall override those of the local. So that in these matters of the fisheries, agriculture and immigration, either the local legislatures must not legislate at all, or if they do the General Legislature may at any time undo anything they may have done. One can easily foresee any amount of clashing of authority in such cases. Fishery regulations of all sorts—bounties perhaps; the thousand questions affecting agriculture. Or to take just one that suggests itself as to immigration; one province wishes, perhaps, to encourage immigration of a certain kind, say, for instance, from the continent of Europe. It is a legitimate wish; but the Federal Legislature may, perhaps, in the varying shifts of public opinion, adopt a different policy, and reverse all that the province may have done. To what end give powers to the local parliaments which may thus be taken away at any moment by the Federal Legislature? But, Mr. Speaker, there are a hundred other cases as to which I could satisfy the House, had I time for doing so, that more or less of this confusion arises. Take the subject of marriage and divorce for one—a subject on which there is a great deal of local prejudice and feeling, and into which even religious convictions largely enter. That matter is given to the General Legislature. But on the other hand the larger matter, civil rights—of which this of marriage and divorce, from one point of view, forms a mere part—is given to the local legislatures. I turn to another matter. haphazard—the subjects of railway legislation, of railway incorporation, and of railway amalgamation. What Legislature has power in these matters under this scheme? I am not sure that there.

Digitized by Google

are not here as nice a lot of pretty little questions as one would desire to see in a summer's day. . . .

We find it stated that "The seat of Government of the Federated Provinces shall be Ottawa, subject to the royal prerogative." It is distinctly laid down as a part of our system that the royal prerogative, the right to change the seat of the Federal Government at will, is to be maintained. But I venture to say that the maintaining of that right is simply inconsistent with the practical working out of a federal system. And this is a matter involving a good deal of anomaly, as honourable gentlemen will see when they begin to think of it. The Governor General or Viceroy, the all but king of this Confederacy, with his all but Imperial Government, and all but Imperial Legislature, constituted no matter how, resident within the territorial jurisdiction of a subordinate province! The police of the federal capital, not federal but provincial! That thing won't do. . . .

We have a large class whose national feelings turn towards London, whose very heart is there; another large class whose sympathies centre here at Quebec, or in a sentimental way may have some reference to Paris; another large class whose memories are of the Emerald Isle; and yet another whose comparisons are rather with Washington; but have we any class of people who are attached, or whose feelings are going to be directed with any earnestness, to the city of Ottawa, the centre of the new nationality that is to be created? In the times to come, when men shall begin to feel strongly on those questions that appeal to national preferences, prejudices and passions, all talk of your new nationality will sound but strangely. Some other older nationality will then be found to hold the first place in most people's hearts. . . .

It is proposed to adopt here a plan which has a direct tendency to place on the floor of our House of Commons a number of provincial delegations, and not a number of independent members of parliament. The tendency is therefore towards a system antagonistic to, and inconsistent with, those principles on which the British Constitution reposes. With provincial delegations, rather than members of parliament, on the floor of the Federal Legislature, we are not likely to have that political longevity, whether of men or parties, without which the British system of government can hardly exist. . . .

Digitized by Google

In all the provinces the provincial governments will, in a quiet way, want money, and the provincial legislators and people will want it yet more; grants for roads and bridges, for schools, for charities, for salaries, for contingencies of the legislative body—for all manner of ends they will be wanting money, and where is it to come from? Whether the constitution of the Provincial Executive savours at all of responsible government or not, be sure it will not be anxious to bring itself more under the control of the legislature, or to make itself more odious than it can help, and the easiest way for it to get money will be from the General Government. I am not sure, either, but that most members of the provincial legislatures will like it that way the best. It will not be at all unpopular, the getting of money so. Quite the contrary. Gentlemen will go to their constituents with an easy conscience, telling them: "True, we had not much to do in the Provincial Legislature, and you need not ask very closely what else we did; but I tell you what, we got the Federal Government to increase the subvention to our province by five cents a head, and see what this gives you—$500 to that road—$1,000 to that charity—so much here, so much there. That we have done; and have we not done well?" I am afraid in many constituencies the answer would be: "Yes, you have done well; go and do it again." I am afraid the provincial constituencies, legislatures and executives will all show a most calf-like appetite for the milking of this one most magnificent government cow. . . . And even this is not all. Not only will you have these comparatively direct demands—more or less ingeniously, but always irresistibly—made, but you will have demands made in a more indirect form which it will be yet easier to carry, from their consequences not being so clearly seen, and which will therefore be still worse in their effects. I speak of that tremendous catalogue of outlays which may be gone into without the appearance of a grant to any particular province—the costly favours which may be done in respect of interprovincial ferries, steamship lines between or from the provinces, railways between or through the provinces, telegraph lines, agriculture, immigration, quarantine, fisheries, and so forth. There will be claims of every description under all these heads; and besides them there

Digitized by Google

will be the long roll of internal improvements of all kinds, whether for the benefit of one or of more than one of the provinces. For any local work in which it can be at all pretended that it is of general interest, pressure may be brought to bear upon the General Government and Legislature, and whenever one province succeeds in getting any such grant, every other province must be dealt with in the same way. Compensation must be made all round, and no human intellect can estimate the degree of extravagance that before long must become simply inevitable. Sir, with our Upper and Lower Canada we have had pretty good proof of this. We know that whenever anything has had to be done for one section of this province, it has constantly been found necessary to do something of the same or of some other kind for the other. If either needed anything very badly, then the ingenuity of the Minister of Finance had to be exercised to discover something else of like value to give the other. In one word, unless I am more mistaken than I think I can be, these local governments will be pretty good daughters of the horse-leech, and their cry will be found to be pretty often and pretty successfully—"Give, give, give!" . . .

We are going to be called upon to spend money for yet another kindred purpose, and a large amount too—and this, as a part of this scheme. Our star of empire is to wing its way westward; and we are to confederate everything in its track, from Newfoundland to Vancouver's Island, this last included. But, between us and it, there lies the Hudson Bay territory. So, of course, we must acquire that for confederation purposes; and the plan is, that before we get it we shall have to pay for the elephant—though, after we get him, we may find him costly and hard to keep. . . .

Disguise it how you may, the idea that underlies this plan is this, and nothing else—that we are to create here a something—kingdom, viceroyalty, or principality—something that will soon stand in the same position towards the British Crown that Scotland and Ireland stood in before they were legislatively united with England; a something having no other tie to the Empire than the one tie of fealty to the British Crown—a tie which in the cases, first, of Scotland, and then of Ireland, was found, when the pinch came, to be no tie at all;

Digitized by Google

which did not restrain either Scotland or Ireland from courses so inconsistent with that of England as to have made it necessary that their relations should be radically changed, and a legislative union formed in place of a merely nominal union. Suppose you do create here a kingdom or a principality, bound to the Empire by this shadow of a tie, the day of trial cannot be far distant, when this common fealty will be found of as little use in our case as it was in theirs; when, in consequence, the question will force itself on the Empire and on us, between entire separation on the one hand, and a legislative union on the other. But a legislative union of British America with the United Kingdom must be, in the opinion of, one may say, everybody at home and here, a sheer utter impossibility; and when the question shall come to be whether we are so to be merged in the United Kingdom or are to separate entirely from it, the answer can only be—"At whatever cost, we separate." Sir, I believe in my conscience that this step now proposed is one directly and inevitably tending to that other step; and for that reason—even if I believed, as I do not, that it bid fair to answer ever so well in the other respects—because I am an Englishman and hold to the connection with England, I must be against this scheme. . . .

The real danger is not of war with the United States. It is from what I may call their pacific hostility—from trouble to be wrought by them within this country—trouble to arise out of refusal of reciprocity—repeal of the bonding system—custom-house annoyances—passport annoyances; from their fomenting difficulties here, and taking advantage of our local jealousies; from the multiplied worries they may cause us by a judicious alternation of bullying and coaxing, the thousand incidents which may easily be made to happen if things are not going on quite well in this country, and the people and government of the States are minded to make us feel the consequences of our not getting on quite so well as we might. Whether the union of the States is restored or not, this kind of thing can go on. The danger is, that either the united United States, or those portions of the United States which are near us, and which are really stronger than we are, and enterprising enough and ambitious enough, and not very fond of us, and not at all fond of the Mother Country, not at all unwilling to strike a blow at her and

Digitized by Google

to make us subservient to their own interest and ambition—the danger is, I say, that the United States, or those portions of the United States near us, may avail themselves of every opportunity to perplex us, to embroil us in trouble, to make us come within the disturbing influences of their strong local attraction.—Now, to pretend to tell me that the United States or the Northern States, whichever you please, are going to be frightened, from a policy of that kind, by our taking upon ourselves great airs, and forming ourselves into a grand Confederation, is to tell me that their people are, like the Chinese, a people to be frightened by loud noises and ugly grimaces. I do not believe they are.

Digitized by Google

CONCLUSION

WITH some small changes, the British North America Act still remains the Constitution of Canada. But just as Lord Sydenham and Robert Baldwin, the founders of Canadian municipal government, would view with surprise some of its later developments, so the most far-seeing of the "Fathers of Confederation" would wonder not a little at the shape which forty years have given to some of the features of their offspring. The development has consisted more in the interpretation of the clauses of the Act than in any great changes introduced into it, and still more in the growth of unwritten rules and formulas; for though the British North America Act is much easier to change than the Constitution of the United States, it is considered by the great majority of Canadians to possess not a little of the same sacro-sanctity.

The task of interpretation has fallen largely to the Judicial Committee of the Privy Council, which has been to Canada a most valuable court of reference, at once able and impartial. The need of such interpretation has been specially necessary owing to the great increase in the size of the Dominion. In 1870 the North-West Territories were acquired from the Hudson's Bay Company, and already the three provinces of Manitoba, Saskatchewan, and Alberta, have been carved out of the purchase. In 1871 British Columbia, and in 1873

Digitized by Google

Prince Edward Island, entered the Dominion. With the enormous development of the West; with the opening up of New Ontario and New Quebec; with the supersession of the cattle-ranch by the wheat-field, and of the hunter and trapper by the miner, new and difficult problems are asking for settlement. Politically Canada is outgrowing the colonial status, and the problem of her position within the Empire awaits solution. Within her borders the old quarrel between French and English is dying down, and with the growth of the country economic questions are coming more and more to the fore. The relations to the federal and provincial governments of the great companies which control railways and steamships, telegraphs and telephones; the question of public control and public ownership of her almost unrivalled resources—in a word, all the problems involved in the words "private ownership," "State regulation," "State ownership," with or without State working—are coming to the front.

But such matters belong to the future, and do not as yet admit of documentary illustration. May we not hope that, even as the documents in this volume, if they are in part the record of human error and of the little wisdom with which this world is governed, are yet much more the record of problems solved and errors overcome, so also the same courage, honesty, and imagination may find a solution for the still more subtle problems of the future?

BILLING AND SONS, LTD., PRINTERS, GUILDFORD

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

14 DAY USE
RETURN TO DESK FROM WHICH BORROWED
LOAN DEPT.
This book is due on the last date stamped below, or on the date to which renewed.
Renewed books are subject to immediate recall.
29Sep'59 BY
IN STACKS
SEP 15 1959
REC'D LD
JUN 8 1960
11Ja'61EC
REC'D LD
JAN 10 '61
REC'D LD
OCT 10 '65 -5 PM
LD 21A-50m-4,'59
(A1724s10)476B
General Library
University of California
Berkeley
Digitized by Google

TC 10887

LIBRARY USE
RETURN TO DESK FROM WHICH BORROWED
LOAN DEPT.
THIS BOOK IS DUE BEFORE CLOSING TIME
ON LAST DATE STAMPED BELOW

LIBRARY USE
OCT 10 '65
REC'D LD
OCT 10 '65 -5PM

LD 62A-50m-2,'64
(E3494s10)9412A

General Library
University of California
Berkeley

Digitized by Google

Digitized by Google